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Federal Register

Friday
November 22, 1985

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Food and Drug Administration

Authority Delegations (Government Agencies)
Federal Energy Regulatory Commission

Aviation Safety
Federal Aviation Administration

Bilingual Education
Education Department

Communications Common Carriers
Federal Communications Commission

Crop Insurance
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Housing and Urban Development Department

Prisoners
Prisons Bureau

Quarantine
Animal and Plant Health Inspection Service

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-389]

Oriental Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the Oriental fruit fly regulations by adding a portion of Santa Clara County in California to the list of areas designated as quarantined areas. This action is necessary as an emergency measure in order to prevent the artificial spread of the Oriental fruit fly into noninfested areas of the United States. The effect of this action is to impose certain restrictions on the interstate movement of regulated articles moving interstate from the quarantined area.

DATES: Effective date of this interim rule: November 19, 1985. Written comments concerning this interim rule must be received on or before January 21, 1986.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Room 728, 6505 Belcrest Road, Hyattsville, Maryland 20782. Comments should state that they are in response to Docket Number 85-389. Written comments received may be inspected at Room 728, Federal Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Assistant Director of the National Program Planning Staff in charge of the Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Dacus dorsalis* (Hendel), is a very destructive pest of numerous fruits (especially citrus fruits), nuts, vegetables, and berries. This pest can cause serious economic losses. Heavy infestations can result in complete loss of such crops. Its short life cycle permits the rapid development of serious outbreaks.

A document published in the **Federal Register** on October 24, 1985, (50 FR 43117-43125) established the Oriental fruit fly regulations (7 CFR 301.93 *et seq.*; referred to below as regulations). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the artificial spread of the Oriental fruit fly to noninfested areas of the United States.

The regulations, among other things, designated portions of Los Angeles and Orange Counties as quarantined areas. It was necessary to designate these areas as quarantined areas because of the finding of Oriental fruit fly. These areas remain infested at this time.

However, the Oriental fruit fly has now been found in an area of Santa Clara County in California. These findings were based on trapping surveys conducted by inspectors of the United States Department of Agriculture and State agencies of California. The regulations in § 301.93 provide that the Deputy Administrator shall list as a quarantined area each State, or each portion thereof, in which the Oriental fruit fly has been found by an inspector, or in which the Deputy Administrator has reason to believe that the Oriental fruit fly is present, or each portion of a State which the Deputy Administrator deems necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly occurs.

Under this criteria it is necessary to amend the regulations by adding the following area in Santa Clara County in California as a quarantined area:

That portion of Santa Clara County lying within the following boundaries: Beginning at a point where U.S. Highway 101 intersects State Highway 237; then northeasterly along State Highway 237 to its intersection with Lawrence Expressway; then southerly along said expressway to its intersection with Tasman Drive; then easterly along said drive to its intersection with Lafayette Street; then southeasterly along said street to its intersection with Montague Expressway; then northeasterly along said expressway to its intersection with North First Street; then southeasterly along said street to its intersection with State Highway 17; then southwesterly along said highway to its intersection with State Highway 82, then southeasterly along State Highway 82 to its intersection with Naglee Avenue; then southwesterly along said avenue to its intersection with Park Avenue; then southeasterly along Park Avenue to its intersection with Shasta Avenue; then southerly along Shasta Avenue to its intersection with Leigh Avenue; then southerly along Leigh Avenue to its intersection with Campbell Avenue; then westerly along Campbell Avenue to its intersection with San Tomas Aquino Road; then south along said road to its intersection with Bucknall Road; then westerly along Bucknall Road to its intersection with Quito Road; then southerly along Quito Road to its intersection with Cox Avenue; then westerly along said avenue to its intersection with Saratoga Sunnyvale Road; Then westerly along an imaginary line from said intersection to the intersection of Mount Eden Road and Stevens Canyon Road; then northerly along Stevens Canyon Road to its intersection with Foothill Boulevard; then northerly along said boulevard to its intersection with Foothill Expressway; then northwesterly along said expressway to its intersection with Miramonte Avenue; then northerly along said avenue to its intersection with Castro Street; then northeasterly along said street to its intersection with Moffett Boulevard; then northeasterly along said boulevard to its intersection with U.S. Highway 101; then southeasterly along said highway to the point of beginning.

The State of California has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under the regulations, and it appears that the designation of less than the entire State as a quarantined area will otherwise be adequate to prevent the artificial interstate spread of the Oriental fruit fly.

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for a public comment period. Due to the possibility that the Oriental fruit fly could be spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to help control the spread of this pest.

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Executive Order 12291 and Regulatory Flexibility Act

This rule 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 have an effect on the economy of less than 100 million dollars; 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 a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This amendment affects the interstate movement of regulated articles from a portion of Santa Clara County in California. The regulated articles that are affected by this interim rule represent significantly less than one percent of such articles in the United States.

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.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR 1 Part 3015, Subpart V).

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements unde the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation, Oriental fruit fly.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.93–3(c), the description of the quarantined areas are amended by adding a portion of Santa Clara County in California, in alphabetical order to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas:

California.

* * * * *

Santa Clara County

That portion of Santa Clara County lying within the following boundaries: Beginning at a point where U.S. Highway 101 intersects State Highway 237; then northeasterly along State Highway 237 to its intersection with Lawrence Expressway; then southerly along said expressway to its intersection with Tasman Drive; then easterly along said drive to its intersection with Lafayette Street; then southeasterly along said street to its intersection with Montague Expressway; then northeasterly along said expressway to its intersection with North First Street; then southeasterly along said street to its intersection with State Highway 17; then southeasterly along said highway to its intersection with State Highway 82, then southeasterly along State Highway 82 to its intersection with Naglee Avenue; then southwesterly along said avenue to its intersection with Park Avenue; then southeasterly along Park Avenue to its intersection with Shasta Avenue; then southerly along Shasta Avenue to its intersection with Leigh Avenue; then southerly along Leigh Avenue to its intersection with Campbell Avenue; then westerly along Campbell Avenue to its intersection with San Tomas Aquino Road; then south along said road to its intersection with Bucknall Road; then westerly along Bucknall Road to its intersection with Quito Road; then southerly along Quito Road to its intersection with Cox Avenue; then westerly along said avenue to its intersection with Saratoga Sunnyvale Road; then westerly along an imaginary line from said intersection to the intersection of Mount Eden Road and Stevens Canyon Road; then northerly along Stevens Canyon Road to its intersection with Foothill Boulevard; then northerly along said boulevard to its intersection with Foothill Expressway; then northwesterly along said expressway to its intersection with Miramonte Avenue; then northerly along said avenue to its intersection with Castro Street; then northeasterly along said street to its intersection with Moffett Boulevard; then northeasterly along said boulevard to its intersection with U.S. Highway 101; then southeasterly along said highway to the point of beginning.

Done at Washington, DC., this 19th day of November 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–27886 Filed 11–21–85; 8:45 am]

BILLING CODE 3410–34–M

Federal Crop Insurance Corporation

7 CFR Part 420

[Document No. 2907S]

Grain Sorghum Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Grain Sorghum Crop Insurance Regulations (7 CFR Part 420), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Limit the insured's share of an indemnity on crops transferred before harvest; (2) increase the minimum

acreage which must be replanted before earning replanting payments; (3) shorten the length of time an insured has to give notice when claiming an indemnity; (4) add a definition of "ASCS"; (5) redefine "County" to clarify when land located outside the county is included in the county; and (6) allow one year for furnishing records required by the Actual Production History yield determination. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: November 30, 1985.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined and certifies that this action (1) is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) Major increases in costs or prices for consumers, individual industries, federal, State, of local governments, or a geographical region; or (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

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

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

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

Other than minor changes in language and format, the principal changes in the grain sorghum policy are:

1. Section 2.c.—Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This will limit indemnities to the insured's insurable interest at the time of loss.

2. Section 8.a.—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities in a more timely fashion.

3. Section 9.f.—Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage required to be replanted to qualify for a replant payment and clarify that the percentage to be replanted is computed on the acreage initially planted on the unit as of the final planting date. This reduces the number of inspections by eliminating small replant payments and paperwork.

4. Section 17.—Add a definition of "ASCS". Amend the "County" definition to clarify when land located outside the county is included in the county.

5. Section 15.c.—Change the time for submission of records under the Actual Production History yield determination to allow an additional year before cancellation.

On Monday, September 9, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 36580, revising and reissuing the Grain Sorghum Crop Insurance Regulations (7 CFR Part 420). The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule.

No comments were received in direct response to this proposed rule. However, on September 4-5, 1985, the Board of Directors, FCIC held informal meetings in Hearing Room B, Interstate Commerce Commission Building, Washington, DC, for the purpose of receiving comments from interested parties on the general proposal to restrict unit division by removing unit division guidelines from policies. The concept was included in the proposed rule.

The determination to eliminate applicable unit division guidelines restricts unit division to include all the insurable crop grown within a county with no allowance for further division beyond those contained in the crop insurance policies

Comments were received from six representatives of the private insurance industry, one member of Congress, fifteen insurance agents, four representatives of special interest groups, and five farmers.

The comments generally opposed the proposed change to the insurance unit definition which would delete the guidelines filed at county service offices.

Arguments against the proposed unit division change included: (1) Separate insurance units for widely dispersed tracts of farmland, differing topography or soil types, and differing cultural or farm management practices are necessary to maintain or build participation levels; (2) spot causes of loss like hail and flood generally damage only a relatively small portion of the total planted acreage of most farms, thus the more units allowed, the greater the protection offered; (3) the proposed unit structure would result in discrimination or unfair treatment among producers; (4) the producer is entitled to an indemnity payment under the crop insurance program when he suffers a loss on a portion of his planted acreage even when overall yields are normal; and (5) expected reductions in participation would result in increased adverse selection.

Many agreed that the current unit structure is less than satisfactory, but argued that FCIC should delay implementation of the proposed rule to provide time for further study and analysis of alternative approaches.

FCIC has determined to retain the present unit structure and institute further studies which are to be presented to the Board of Directors for consideration at the first meeting of the Board after February 1, 1986.

It is the objective of the FCIC to provide producers of agricultural commodities a program of insurance with an insurance unit structure which:

—Provides a disaster protection plan of insurance which meets the needs of producers at the lowest possible cost per acre.
—Minimizes the potential for fraud and abuse.
—Reduces the administrative costs of FCIC and writing companies.
—Minimizes the burden upon producers.
—Improves the actuarial soundness of the program.
—Simplifies and standardizes the unit definition for all programs.

The Board of Directors has discussed the unit definition issue on several occasions over the past three years.

The current standard insurance policy language defines "unit" as:

"Unit" means all insurable acreage of (name of crop) in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the (name of crop) on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your county service office.

As a matter of usual practice, units are often divided beyond that allowed by the policy unit definition to permit separate units by section or ASCS farm serial number. This is intended to be permitted only when verifiable records of production on such a basis eixst.

The more insurance units allowed on a single contract, the higher the potential for fraud and abuse, the higher the costs of administration, and the larger the likelihood of legitimate loss.

The FCIC Board of Directors has been increasingly concerned about the high loss ratios (about 150%) experienced by the Corporation in the 1980–1984 period. It has refused to order a major premium rate increase because of its belief that normal weather and sound program design will prove the existing rates adequate over the long term. The Board has chosen a course of action to reduce adverse selection, lessen the potential for fraud and abuse, and improve the equitability of the insurance offer between options and areas of operation.

The Board believes that these actions are preferable to the alternative of major increases in premiums to producers.

The level of program participation by potential insureds is of great interest to the FCIC. The potential users of the program, the farmers of this nation, have a clear need for the protection offered. Higher levels of participation are desired because such expanded use of a crop insurance as a risk management tool can reduce the adverse economic impacts of crop failure on not only individual producers but the state and community in which they live. Crop insurance as a device to offer disaster assistance to farmers is much preferred to the alternative programs offered in the past in terms of equitability and cost to the public. Further, higher levels of participation tend to remove adverse selection which continues to be a problem of program administration.

There is an apparent need to modify the insurance unit determination practices of the past. Most of the comments received recommended delay and further study of the issues relating to insurance unit definition and that recommendation is accepted as being in the best interests of the program at this time.

The management of FCIC has been directed to present the results of further study to the Board of Directors at its first meeting after February 1 1986. Interested parties are requested to offer input or comments to the Board. Any proposal presented during the requested timeframe should not only consider the impact upon program participation but also have a positive impact upon the actuarial soundness of the programs and the costs and burden of administration.

The most significant objection raised was the opinion that significant adverse perception of the previously proposed change would lead to large numbers of cancellations by insured producers. The FCIC determination to permit the continued use of guidelines allowing further unit division will encourage continued growth in the program without undue risk of higher than normal cancellations.

These actions respond positively to the marketing-related concerns expressed regarding the previously proposed changes to the insurance regulations. They should have minimal adverse impact upon the attractiveness of the insurance offer and thus little negative impact upon participation rates.

Since policy changes must be on file by November 30, 1985, good cause is shown for making this rule effective in less than 30 days.

Therefore, with the exception of minor changes in language and format, the proposed rule, amended as outlined above, is hereby adopted.

List of Subjects in 7 CFR Part 420

Crop insurance, Grain sorghum

Final rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Grain Sorghum Crop Insurance Regulations (7 CFR Part 420), effective for the 1986 and succeeding crop years, to read as follows:

PART 420—GRAIN SORGHUM CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

420.1 Availability of grain sorghum crop insurance.
420.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
420.3 OMB control numbers.
420.4 Creditors.
420.5 Good faith reliance on misrepresentation.
420.6 The contract.
420.7 The application and policy.

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

§ 420.1 Availability of grain sorghum crop insurance.

Insurance shall be offered under the provisions of this subpart on grain sorghum in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 420.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for grain sorghum which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 420.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 420.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 420.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the grain sorghum insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a

misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Request for relief under this section must be submitted to the Corporation in writing.

§ 420.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the grain sorghum crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 420.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the grain sorghum crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a contribution of a grain sorghum contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Grain Sorghum Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Grain Sorghum—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(2) The failure to follow recognized good grain sorghum farming practices;
(3) The failure or breakdown of irrigation equipment or facilities;
(4) The failure to follow good grain sorghum irrigation practices;
(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or
(6) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured.

a. The crop insured will be grain sorghum which is initially planted to a combine-type hybrid grain sorghum for harvest as grain, which is grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be grain sorghum planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured grain sorghum at the time of planting. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(2) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(3) Which is destroyed, it is practical to replant to grain sorghum, and such acreage is not replanted;
(4) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, or our form to coverage reduction;
(5) Of volunteer grain sorghum;
(6) Planted to a forage sorghum or initially thick-planted for silage or fodder;
(7) Of a second grain sorghum crop following a grain sorghum crop harvested in the same crop year;
(8) Planted to a type or variety of grain sorghum not established as adapted to the area or excluded by the actuarial table; or
(9) Planted with another crop.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good grain sorghum irrigation practice.

f. Unless otherwise provided in the actuarial table and if not irrigated, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation. If such acreage is destroyed and replanted to any grain-producing type grain sorghum in any planting pattern, the acreage will be considered insured acreage.

g. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

h. We may limit the insured acreage to any acreage limitation established under any Act

of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice.

You must report on our form:

a. All the acreage of grain sorghum in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any grain sorghum planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices For Computing Indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

5. Annual Premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the grain sorghum policy in effect for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions For Debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period.

Insurance attaches when the grain sorghum is planted and ends at the earliest of:

(a) Total destruction of the grain sorghum;

(b) Combining, threshing, or removal from the field;

(c) Final adjustment of a loss; or

(d) The following dates immediately after planting:

(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties south thereof, September 30;

(2) All other Texas counties and all other States, December 10.

8. Notice of Damage of Loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant grain sorghum damaged due to any insured cause (see subsection 9.f.);

(b) During the period before harvest, the grain sorghum on any unit is damaged and you decided not to further care for or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the grain sorghum and given written consent. We will not consent to another use until it is too late to replant.

You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given and a representative sample of the unharvested grain sorghum (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the grain sorghum on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the grain sorghum on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the grain sorghum which is not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim For Indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the grain sorghum on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of grain sorghum on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of grain sorghum to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature grain sorghum production which is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent.

(2) Mature grain sorghum production which, due to insurable causes:

(a) Has a test weight of less than 51 pounds per bushel; or

(b) Contains more than 15.0 percent kernel damage, as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act, will be adjusted by:

(i) Dividing the value per bushel of the insured grain sorghum by the price per bushel of U.S. No. 2 grain sorghum; and

(ii) Multiplying the result by the number of bushels of such grain sorghum.

The applicable price for No. 2 grain sorghum will be the local market price on the earlier of the day the loss is adjusted or the day the insured grain sorghum is sold.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good grain sorghum farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of grain sorghum becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(5) The amount of production of any unharvested grain sorghum may be determined on the basis of field appraisals

conducted after the end of the insurance period.

(6) If you elect to exclude hail and fire as insured causes of loss and the grain sorghum is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured grain sorghum replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit, (as determined on the final planting date).

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current year.

(2) The replanting payment per acre will be your actual cost per acre for replanting but will not exceed 7 bushels multiplied by the price election, multiplied by your share.

If the information reported by your results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abondon any acreage to us.

h. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the grain sorghum is planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share.

If yor transfer any part of your share during the crop year, you many transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right to recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records And Access To Farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all grain sorghum produced on each unit, including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract. Failure to maintain and keep such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due.

15. Life of Contract: Cancellation and Termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Ninety days prior to the cancellation date for any crop year you must:

(1) Furnish to the Corporation, satisfactory production records for the previous crop year or the contract will be canceled for the subsequent crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood or other natural disaster. (If this subsection (2) applies, the Field Acturial Office may assign a yield for the year for which the records are unavailable.)

You may furnish the records required by this section for any crop year at least 30 days prior to the crop year's cancellation date. Your election of this option will result in the inclusion of that crop year's production information in the next crop year's yield guarantee.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity, will be the date you sign the claim; or

(2) If deducted from a payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	Mar. 31.
All other Texas counties and all other states	Apr. 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price

election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 prior to the cancellation date for counties with an April 15 cancellation date and by November 30 prior to the cancellation date for all other counties. Acceptance of any change will be conclusively presumed in the absence of any written notice from you to cancel the contract.

17. Meaning of Terms.

For the purpose of grain sorghum crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding grain sorghum insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county as shown by the actuarial table; and

(3) Land identified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the grain sorghum is normally grown and will be designated by the calendar year in which the grain sorghum is normally harvested.

e. "Harvest" means the completion of combining or threshing of grain sorghum on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to grain sorghum.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the grain sorghum or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of grain sorghum in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the grain sorghum on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on October 28, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-27882 Filed 11-21-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Parts 420, 421, 424, 425, 431, 432, 438, and 448

[Docket No. 2919S]

Crop Insurance Regulations—Various

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Corn, Cotton, ELS Cotton, Grain Sorghum, Peanuts, Rice, Soybean, and Canning and Processing Tomato Crop Insurance Regulations, effective for the 1985 calendar year only, by extending the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the Actuarial Tables for such crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: November 22, 1985.

Comment Date: Written comments, data, and opinions on this interim rule must be submitted not later than January 21, 1986, to be sure of consideration.

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

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, has determined and certifies that this action (1) is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

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

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

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

Section 16 of the policy for each of the crops affected provides that any

changes in the contract must be placed on file in the service office by a certain date. The contract consists of the application, the policy, and the actuarial table. Due to the workload involved in making changes on the actuarial table for each crop insured in each county where such insurance is offered, it is necessary for FCIC to extend the date for filing changes to the contract for certain crops referred to herein an additional 30 days. It has therefore been determined that the date for those crops is extended to December 31, 1985, effective for the 1985 calendar year only.

FCIC is still reviewing all the actuarial tables for the regulations referred to herein to determine whether the average yields for centering rate spans and the transitional yield computations are correct in each crop insurance policy and are consistent with sound actuarial principles and, if not, to make adjustments where necessary. It has been determined that yield averages for many crops for 1986 would be updated to assure yield ranges consistent with current county average yields. Incoming yield data has been particularly slow on certain crops, including those affected by the changes contained herein. In addition, incompatibilities were detected in transferring yield data from one computer processing system to another, delaying completion of actuarial reviews in time for the November 30, 1985, filing date. The amount of work involved is such that these reviews will not be completed prior to the date for filing such actuarial data in the service offices for the crops and counties involved unless the filing date is extended.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without providing for a period for public comment before such publication. Without this review, the statutory mandate that the program be actuarially sound could not be met. The workload involved in these actuarial changes will not permit filing of these actuarial tables by the present contract date of November 30. There is not sufficient time to provide for public comment and implement these changes prior to November 30. It has been determined that the date by which such changes are required to be placed on file in the service office shall be extended from November 30, 1985, until December 31, 1985, and made effective for the 1985 calendar year only for corn, cotton, ELS cotton, grain sorghum, peanuts, rice, soybeans, and canning and processing tomatoes.

The changes in the actuarial tables for the crops affected by this rule may be beneficial in some instances and detrimental in others. All policyholders should be aware of the changes in the actuarial table affecting their individual crop insurance contract and of the additional time provided for FCIC to file such changes.

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

Any comments received pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Parts 420, 421, 424, 425, 431, 432, 438, and 448

Crop insurance; Corn, Cotton, ELS Cotton, Grain sorghum, Peanuts, Rice, Soybean, and Canning and processing tomatoes.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Corn, Cotton, ELS Cotton, Grain Sorghum, Peanuts, Rice, Soybean, and Canning and Processing Tomato Crop Insurance Regulations, effective for the 1985 calendar year only (7 CFR Parts 432, 421, 448, 420, 425, 424, 431, and 438, respectively), in the following instances:

PARTS 420, 421, 424, 425, 431, 432, 438, AND 448—[AMENDED]

1. The Authority Citations for 7 CFR Parts 420, 421, 424, 425, 431, 432, 438, and 448 continue to read as follows:

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

§§ 420.7, 421.7, 424.7, 425.7, 431.7, 432.7, and 438.7 [Amended]

2. 7 CFR 420.7(d)16, 421.7(d)16, 424.7(d)16, 425.7(d)16, 431.7(d)16, 432.7(d)16, and 438.7(d)16 are revised to read as follows:

16. Contract Changes.

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

§ 448.7 [Amended]

3. CFR 448.7(d)16 is revised to read as follows:

16. Contract Changes.

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

Done in Washington, DC, on October 30, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-27881 Filed 11-21-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 432

[Amdt. No. 1; Doc. No. 2908S]

Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Corn Crop Insurance Regulations (7 CFR Part 432), effective for the 1986 and succeeding crop years by revising and reissuing the crop policy. The intended effect of this rule is to: (1) Change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (2) increase the amount of acreage which must be replanted to obtain replanting payments; (3) shorten the length of time an insured has to give notice when claiming an indemnity; (4) add a definition of "ASCS"; (5) redefine "County" to add certain land located outside the county; and (6) allow one year for furnishing records required by the Actual Production History yield determination. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 31, 1985.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined and certifies that this action (1) is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

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

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

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

Other than minor changes in language and format, the principal changes in the corn policy are:

1. Section 2.c.—Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This will limit indemnities to insured's insurable interest at the time of loss.

2. Section 9.g.—Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage required to be planted to qualify for a replant payment, and clarify that the percentage is computed on the acreage actually initially planted on the final planting date. This reduces the number of inspections by eliminating small replant payments and paperwork.

3. Section 8.a.—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This change will allow FCIC to determine indemnities in a more timely fashion.

4. Section 17.—Add a definition of "ASCS". Amend the "County" definition to clarify when land located outside the county is determined to be in the county.

5. Section 15.c.—Change the time for submission of records under the Actual Production History yield determination to allow an additional year before cancellation.

On Monday, September 9, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 36589 revising and reissuing the Corn Crop Insurance Regulations (7 CFR Part 432). The public was given 30 days in which to submit written comments, data, and opinions.

No comments were received in direct response to this proposed rule. However, on September 4-5, 1985, the Board of Directors, FCIC held informal meetings in Hearing Room B, Interstate Commerce Commission Building, Washington, DC, for the purpose of receiving comments from interested parties on the Actual Production History (APH) method of insurance and on the proposal to restrict unit division by removing unit division guidelines from policies. The unit division restriction concept was included in the proposed rule.

The determination to eliminate applicable unit division guidelines restricts unit division to include all the insurable crop grown within a county with no allowance for further division beyond those contained in the crop insurance policies.

Comments at the meetings were received from six representatives of the private insurance industry, one member of Congress, fifteen insurance agents, four representatives of special interest groups, and five farmers.

The comments generally opposed the proposed change to the insurance unit definition which would delete the guidelines filed at county service offices.

Those in opposition to the proposed regulations generally argued that they would decrease the marketability of crop insurance by making the resulting insurance offer less attractive to potential purchasers. Many predicted a substantial level of cancellation by current contract holders if the proposed changes became effective.

Arguments against the proposed unit division change included: (1) Separate insurance units for widely dispersed tracts of farmland, differing topography or soil types, and differing cultural or farm management practices are necessary to maintain or build participation levels; (2) spot causes of loss like hail and flood generally damage only a relatively small portion of the total planted acreage of most farms, thus the more units allowed, the greater the protection offered; (3) the proposed unit structure would result in discrimination or unfair treatment among producers; (4) the producer is entitled to an indemnity payment under the crop insurance program when he suffers a loss on a portion of his planted acreage even when overall yields are normal; and (5) expected reductions in participation would result in increased adverse selection.

Many agreed that the current unit structure is less than satisfactory, but argued that FCIC should delay implementation of the proposed rule to provide time for further study and analysis of alternative approaches.

FCIC has determined to retain the present unit structure and institute further studies which are to be presented to the Board of Directors for consideration at the first meeting of the Board after February 1, 1986.

It is the objective of the FCIC to provide producers of agricultural commodities a program of insurance with an insurance unit structure which:

—Provides a disaster protection plan of insurance which meets the needs of producers at the lowest possible cost per acre.
—Minimizes the potential for fraud and abuse.
—Reduces the administrative costs of FCIC and writing companies.
—Minimizes the burden upon producers.
—Improves the actuarial soundness of the program.
—Simplifies and standardizes the unit definition for all programs.

The Board of Directors has discussed the unit definition issue on several occasions over the past three years.

The current standard insurance policy language defines "unit" as:

"Unit" means all insurable acreage of (name of crop) in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any

consideration other than a share in the (name of crop) on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your county service office.

As a matter of usual practice, units are often divided beyond that allowed by the policy unit definition to permit separate units by section or ASCS farm serial number. This is intended to be permitted only when verifiable records of production on such a basis exist.

The more insurance units allowed on a single contract, the higher the potential for fraud and abuse, the higher the costs of administration, and the larger the likelihood of legitimate loss.

The FCIC Board of Directors has been increasingly concerned about the high loss ratios (about 150%) experienced by the Corporation in the 1980–1984 period. It has refused to order a major premium rate increase because of its belief that normal weather and sound program design will prove the existing rates adequate over the long term. The Board has chosen a course of action to reduce adverse selection, lessen the potential for fraud and abuse, and improve the equitability of the insurance offer between options and areas of operation.

The Board believes that these actions are preferable to the alternative of major increases in premiums to producers.

The level of program participation by potential insureds is of great interest to the FCIC. The potential users of the program, the farmers of this nation, have a clear need for the protection offered. Higher levels of participation are desired because such expanded use of a crop insurance as a risk management tool can reduce the adverse economic impacts of crop failure on not only individual producers but the state and community in which they live. Crop insurance as a device to offer disaster assistance to farmers is much preferred to the alternative programs offered in the past in terms of equitability and cost to the public. Further, higher levels of participation tend to remove adverse selection which continues to be a problem of program administration.

There is an apparent need to modify the insurance unit determination practices of the past. Most of the comments received recommended delay and further study of the issues relating to insurance unit definition and that recommendation is accepted as being in the best interests of the program at this time.

The management of FCIC has been directed to present the results of further study to the Board of Directors at its first meeting after February 1, 1986. Interested parties are requested to offer input or comments to the Board. Any proposal presented during the requested timeframe should not only consider the impact upon program participation but also have a positive impact upon the actuarial soundness of the programs and the costs and burden of administration.

The most significant objection raised in the comment period was the opinion that significant adverse perception of the previously proposed change would lead to large numbers of cancellations by insured producers. The FCIC determination to permit the continued use of guidelines allowing further unit division will encourage continued growth in the program without undue risk of higher than normal cancellations.

These actions respond positively to the marketing-related concerns expressed regarding the previously proposed changes to the insurance regulations. They should have minimal adverse impact upon the attractiveness of the insurance offer and thus little negative impact upon participation rates.

Therefore, with the exception of minor changes in language and format, the proposed rule, amended as outlined above, is hereby adopted.

List of Subjects in 7 CFR Part 432

Crop insurance: Corn.

Final rule

PART 432—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Corn Crop Insurance Regulations (7 CFR Part 432), effective for the 1986 and succeeding crop years, in the following instances:

1. the authority citation for 7 CFR Part 432 continues to read as follows:

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

§ 432.7 [Amended]

2. 7 CFR 432.7(d) is amended by revising the Corn Insurance Policy for the 1986 and succeeding crop years to read as follows:

DEPARTMENT OF AGRICULTURE

Federal Corp Insurance Corporation

Corn—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insuance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Corp Insurance Corporation.

Terms and Conditions

1. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(9).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good corn farming practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) The failure to follow good corn irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured.

a. The crop insured will be field corn ("corn") planted for harvest as grain or silage, grown on insured acrage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be corn planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured corn at the time of planting. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to corn, and such acrage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;

(5) Of volunteer corn;

(6) Planted to a type or variety of corn not established as adapted to the area or excluded by the actuarial table; or

(7) Planted with another crop except sorghum (grain or forage-type) when the sorghum is not more than 20 percent of the stand.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good corn irrigation practice.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice.

You must report on our form:

a. All the acreage of corn in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any corn planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices For Computing Indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

5. Annual Premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the corn policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .60, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for Debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period.

Insurance attaches when the corn is planted and ends at the earliest of:

a. Total destruction of the corn;

b. Harvest;

c. Final adjustment of a loss;

d. The date immediately following planting as follows:

(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof—September 30;

(2) Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom Counties, Washington—October 31;

(3) All other counties where our actuarial table shows:

(a) Only a silage guarantee; or

(b) Both a grain and a silage guarantee on any acreage of corn harvested for silage—September 30;

(4) All other counties—December 10.

8. Notice of Damage or Loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant corn damaged due to any insured cause (See subsection 9.g.);

(b) During the period before harvest, the corn on any unit is damaged and you decide not to further care for or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the corn and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given and a representative sample of unharvested corn (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of the notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the corn on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the corn on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the corn which is not to be harvested.

(d) We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the corn on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of corn and/or silage on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this product by the price election;

(3) Subtracting the dollar amount obtained by multiplying the total production to be counted (see section 9f) by the price election; and

(4) Multiplying this result by your share.

d. If a unit contains acreage to which both a grain and a silage guarantee apply, the dollar amount of insurance and dollar amount of the production to be counted will be determined separately for each portion and then added together to determine the total amount for the unit.

e. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

f. The total production to be counted for a unit will include all harvested and appraised production.

(1) When the actuarial table shows only a grain guarantee, all production and appraisals will be determined in bushels. When the actuarial table shows only a silage guarantee, all production and appraisals will be in tons. When the actuarial table shows both a grain and silage guarantee, the production and appraisals will be determined in bushels for any unharvested acreage and in bushels or tons for any harvested acreage, depending upon whether the acreage is harvested for grain or silage.

(2) Mature grain production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12

percent for each .1 percentage point of moisture in excess of 15.5 through 30.0 percent and .2 percent for each .1 percentage point of moisture from 30.1 through 40.0 percent; or

(b) Which, due to insurable causes, has moisture over 40 percent; test weight below 40 pounds per bushel; or kernel damage more than 15 percent as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act, will be adjusted by:

(i) Dividing the value per bushel of such corn by the price per bushel of U.S. No. 2 corn; and

(ii) Multiplying the result by the number of bushels of such corn.

The applicable price for No. 2 corn will be the local market price on the earlier of the day the loss is adjusted or the day such corn was sold. The quality adjustment will not reduce the harvested production more than 75 percent so that at least 25 percent of harvested production will count.

(3) If the actuarial table shows both a grain and silage guarantee or only a silage guarantee, the corn is harvested as silage, a grain appraisal is made concurrently with a silage appraisal, and the grain appraisal is less than 4.5 bushels per ton, the production will be reduced 1 percent for each 1 tenth of a bushel below 4.5 bushels. There will be no reduction allowed for harvested silage production if a representative sample (at least 10 feet wide and the entire length of the field) for each 25 acres of corn harvested for silage is not left until appraised by us.

(4) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good corn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(5) Any appraisal we have made on insured acreage for which we have given written consent for another use will be considered as production unless such acreage is:

(a) Not put to another use before harvest of corn becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(6) The amount of production of any unharvested corn may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If the actuarial table shows a silage guarantee or both a grain and silage guarantee and the normal silage harvesting period has ended, we may increase any tonnage appraisal or any harvested silage production by the factor designated by the actuarial table to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

(8) If the actuarial table shows only a silage guarantee, we may convert bushels of grain to tons of silage, and increase all production harvested after the normal silage harvesting period by the factor designated by the actuarial table to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

(9) If you elect to exclude hail and fire as insured causes of loss and the corn is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

g. A replanting payment may be made on any insured corn replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit (as determined on the final planting date).

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, except that:

(a) If the actuarial table shows only a grain guarantee or both a grain and silage guarantee, the payment will not exceed 8 bushels multiplied by the price election, multiplied by your share; or

(b) If the actuarial table shows only a silage guarantee, the payment will not exceed 1 ton multiplied by the price election, multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

h. You must not abandon any acreage to us.

i. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** on or about January 1 and July 1 of each year. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the corn is planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before and after the fire.

10. Concealment or Fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity.

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and Access to Farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all corn produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract; Cancellation and Termination.

a. This contract will be in effect for the crop year specified on the appli :ation and

may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Ninety days prior to the cancellation date for any crop year you must:

(1) Furnish to the Corporation, satisfactory production records for the previous crop year or the contract will be cancelled for the subsequent crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

You may furnish the records required by this section for any crop year at least 90 days prior to the crop year's cancellation date. Your selection of this option will result in the inclusion of that crop year's production information in the next crop year's yield guarantee.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from a payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	Mar. 31.
All other Texas counties and all other states.	Apr. 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by November 30 preceding the cancellation date for all other counties. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms.

For the purposes of corn crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding corn insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the corn is normally grown and will be designated by the calendar year in which the corn is normally harvested.

e. "Harvest" means completion of combining, picking, or cutting the corn for the purpose of livestock feed.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to corn.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Silage" means corn harvested by severing the stalk from the land and chopping the stalk and the ear for the purpose of livestock feed.

m. "Tenant" means a person who rents land from another person for a share of the corn or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of corn in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the corn on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC on October 28, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-27883 Filed 11-21-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 614]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 614 establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period November 22–28, 1985. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 614 (§ 907.914) becomes effective for the period November 22–28, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985–86 adopted by the Navel Orange Administrative Committee. The committee met publicly on November 19, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges is weak. The prorate is needed to stabilize the market and promote orderly marketing.

A digest of the NOAC's 1985–86 marketing policy was published in the September 27, 1985, **Federal Register** (50 FR 39132). Interested persons were afforded opportunity to submit written suggestions, views or pertinent information relating to such policy. Four comments were received. These comments were considered by the USDA in connection with the review of the marketing policy for this program.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. It is necessary to effectuate the declared purposes of the act to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. The Authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.614 is added to read as follows:

§ 907.614 Navel Orange Regulation 614.

(a) District 1: 1,300,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: November 20, 1985.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–28101 Filed 11–21–85; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1945

Emergency Loan for Citrus Grove Rehabilitation and/or Reestablishment

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: By this final rule, the Farmers Home Administration (FmHA) adopts its interim rule, published February 22, 1985. The rule amends the FmHA emergency loan making regulation to incorporate a special provision which will afford citrus growers more realistic loan terms and which will provide a method of loan funds disbursement that will enable them to recover from severe natural disaster losses, and thereby revive their local economies that are largely dependent on the citrus industry.

EFFECTIVE DATE: November 22, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Morris Monesson, Deputy Director, Emergency Division, Farmers Home Administration, USDA Room 5418-South Building, Washington, DC 20250, Telephone Number (202) 382–1632 or Mr. Wilbert Campbell, Designation and Loan Processing Branch Chief, Emergency Division, Farmers Home Administration, USDA, Room 5416-South Building, Washington, DC 20250, Telephone Number (202) 382–1650.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "non-major", because it will not have an annual effect on the economy of $100 million or more, and there will be no major increase in cost or prices for consumers, individual industries, Federal, state, or local Government Agencies, or geographic regions; nor will it have significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion of Final Rule

FmHA implemented its Emergency Loan Making Regulation, Part 1945, Subpart D, Exhibit D upon publication by interim rule in the **Federal Register** (50 FR 7566) on February 22, 1985. That rule provided for a 30 day comment period. The comment period ended March 25, 1985. Comments were received from 2 individuals and organizations.

One respondent supported the interim rule as a positive step in assisting citrus growers, and offered no recommendations for changing it.

One respondent questioned the Emergency Loan limit, which was stated to be $5,000 per borrower for each designated disaster. The Emergency (EM) loan limit is established by law and is currently $500,000 per borrower for each designated disaster; and the necessary revision is made to correct the misprint.

Need for Governmental Action

Citrus producers in the several states have experienced severe physical losses to producing groves, as the result of the December 1983 and January 1985 hard freezes. Government assistance is needed to help eligible citrus producers restore their operations to profitable production, and thereby help revive their related local economies that are largely dependent on the citrus industry.

Repayment terms and loan fund disbursement methods in the Emergency loan regulations need to be changed to afford citrus producers the help they need.

Programs Affected: These modifications affect the following FmHA program as listed in the *Catalog of Federal Domestic Assistance:* 10.404—Emergency Loans.

Intergovernmental Consultation: Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015, Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities". For affected programs, see FmHA Instruction 1940–J, available in any FmHA office.

Environmental Impact Statement

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.

These changes affect emergency physical loss loans only.

List of Subjects in 7 CFR Part 1945

Agriculture, Disaster assistance, Loan Program—Agriculture.

Therefore, the interim rule published in the **Federal Register** of February 22, 1985 (50 FR 7566) is adopted as a final rule with the following amendments to Exhibit D of Subpart D to Part 1945:

PART 1945—EMERGENCY

1. The authority citation for Part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

2. Paragraph III. C. is added to read as follows:

Exhibit D—[Amended]

* * * * *

III. *Definitions:*

* * * * *

C. Building new buildings, repairing existing buildings and improving chattels are *not* included in either of these definitions.

3. Paragraph IV. C. is amended by changing the dollar amount in the last sentence from "$5,000" to $500,000."

4. Paragraph VII. and XI. are revised to read as follows:

VII. *Rehabilitation and/or Reestablishment Requirements:* Citrus growers receiving EM loans under this Exhibit will rehabilitate and/or reestablish their damaged or destroyed citrus groves for production of similar type(s) citrus crops grown during the disaster year. The applicant/borrower will also agree to replant or top graft the trees, as necessary, with a variety(ies) of trees recommended by the Cooperative Extension Service. This will become a condition of loan approval and will be inserted in Item 41 of Form FmHA 1940–1, "Request for Obligation of Funds." The replacement citrus trees and any scion wood used for budding or top grafting must be "Certified," in writing, as being disease free and/or "Registered" as being true to variety by the selling nurseryman or other supplier.

* * * * *

XI. *Understandings and Agreements with Applicant:* In the event a determination is made, at any time during the recovery period, that the operation is no longer economically feasible (cannot meet its cash flow requirements), the undisbursed future advances will be cancelled by the County Supervisor after consultation with the District Director; and appropriate servicing actions will be pursued. Also, the grove rehabilitation and/or reestablishment will be considered "complete" when profitable production is achieved. If this occurs ahead of schedule, the remaining future advances will be cancelled and consideration given to rescheduling the unpaid EM loan balance. The County Supervisor may cancel a future advance(s) after consultation with the District Director and the State Director. This will be acknowledged by the borrower(s) by initialling changes in the Promissory Note, Form FmHA 1940–17, as follows: on page 1 delete the second sentence of the third paragraph from the bottom of the page which reads, "Approval by the Government will be given provided the advance is requested for a purpose authorized by the Government."; and add a footnote at the bottom of page 1 referring to page 3, where the following statement will be inserted in the blank space available, "The Government will approve advances of loan funds, which were not advanced at loan closing, provided the funds will be used for authorized purposes, the borrower has complied with all loan agreements, FmHA determines that the operation is economically feasible, and FmHA determines that FmHA loan funds are needed." Each Promissory Note thus modified will be initialled at both changes by the borrower(s) at the time of loan closing and an explanation of the implications of the changes given to the borrower(s) by the escrow agent or the FmHA official conducting the closing.

* * * * *

Dated: June 3, 1985.

Dwight O. Calhoun,

Acting Associate Administrator, Farmers Home Administration.

[FR Doc. 85–27758 Filed 11–21–85; 8:45 am]

BILLING CODE 3410–07–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 724

Trustees and Custodians of Pension Plans; Interpretive Ruling and Policy Statement Number 85–1

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interpretive Ruling and Policy Statement Number 85–1.

SUMMARY: The NCUA Board has determined that Federal credit unions (FCU's) may offer self-directed IRA and Keogh accounts and act as the custodians of such accounts. This Interpretative Ruling and Policy Statement clarifies the authority of FCU's to perform that service for their members, i.e., to serve as custodians for self-directed IRA and Keogh accounts.

DATES: *Effective date:* November 14, 1985.

Comments: Although this is a final ruling, comments will be accepted until January 20, 1986.

ADDRESSES: Send comments to Rosemary Brady, Secretary, NCUA Board, 1776 G Street, NW., Washington, DC 20456. The NCUA Board will review all comments and determine whether substantive amendments to this ruling or amendments to NCUA's regulations are appropriate.

FOR FURTHER INFORMATION CONTACT: Steven Bisker, Assistant General Counsel, or Yvonne Gilmore, Staff Attorney, at the above address, or telephone (202) 357–1030.

SUPPLEMENTARY INFORMATION: The NCUA Board has determined that FCU's may offer and act as custodians for self-directed IRA and Keogh accounts. Part 724 of NCUA's Rules and Regulations (12 CFR Part 724) authorizes FCU's to act as trustee or custodian of IRA and Keogh accounts (established, respectively, pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA") and the Self-Employed Individual Retirement Act of 1962) of its members where the funds are invested in shares and share certificates of the credit union. However, Part 724 does not state whether, as custodians of such accounts, FCU's may, at the direction of the member, facilitate transfers of funds to other assets.

Part 724 of the NCUA Rules and Regulations was first promulgated in 1975 as § 721.4. The preamble to that Section expressly acknowledged that IRA and Keogh plans established at FCU's were limited to investments of funds in share and share certificate

accounts at the FCU until issues concerning other possible investment activity were resolved. 40 FR 25582 (June 17, 1975).

The primary issue requiring further study was that of the legal authority of Federal credit unions to serve as trustee or custodian of IRA and Keogh plans wherein funds are invested in assets other than share or share certificate accounts in the credit union. This issue arises from the fact that Federal credit unions do not have general, discretionary trust powers. The Employee Retirement Income Security Act, however, recognizes federally insured credit unions as being among the qualifying trustees or custodians of IRA and Keogh trusts, for purposes of the individual accountholder obtaining certain tax benefits, and does not limit the investment of trust funds to share and share certificate accounts of the credit union. (*See* 26 U.S.C. 401(d), 408 (a) and (h).) Further, section 207(c)(3) of the Federal Credit Union Act (12 U.S.C. 1787(c)(3)) addresses insurance coverage of IRA and Keogh retirement accounts at federally insured credit unions, thus separately establishing the authority of Federal credit unions to offer IRA and Keogh accounts when the funds are invested in shares and share certificates in the credit union. NCUA has determined that these provisions, read together, provide sufficient authority for Federal credit unions to offer and serve as trustee or custodian of IRA and Keogh accounts where all funds are initially deposited to share or share certificate account at the credit union and any subsequent transfers to other assets are solely at the discretion and direction of the credit union member establishing the account. Such activity is both incidental to the FCU's authority to offer IRA and Keogh share accounts and is also consistent with ERISA's recognition of insured credit unions as qualifying custodians, for tax purposes, of IRA and Keogh trusts.

As stated in the text of NCUA's Interpretive Ruling, set forth below, the establishment of self-directed IRA and Keogh accounts at FCU's will require an FCU to engage only in custodial duties with no exercise of investment discretion. Further, the FCU will not be permitted to provide investment advice. The FCU will simply arrange for the purchase or sale of assets upon the instructions of the member. The IRA or Keogh participant will bear the risks of his investment decisions. Additionally, it is noted that the part of the IRA or Keogh account invested in other than shares or share certificates at the FCU will not be insured by the National Credit Union Share Insurance Fund. The FCU shall take appropriate measures to ensure that this fact is understood by the member.

Although this IRPS does not mandate specific requirements concerning recordkeeping and segregation of assets, FCU's must operate in accordance with applicable laws and regulations governing IRA and Keogh trust accounts and consistent with principles of sound custodial (trust) administration, including the segregation and/or adequate identification of corresponding assets of IRA and Keogh accounts, whether held by the credit union or, under a contractual safekeeping arrangement, with a third party. An FCU should take steps to assure that individual member account records reflect all assets bought and sold on behalf of the member. In addition, an FCU should maintain proper records to verify, among other things, the account for which each transaction was effected, a description of the asset, the purchase (or sale) price of the asset, the trade date, and the name or other designation of the broker-dealer or other person (entity) from whom the asset was purchased or sold. Such information will also be used, in part, in preparation of forms required to be filed with the Internal Revenue Service by all custodians and trustees of IRA and Keogh accounts.

It is not NCUA's intention, through this interpretative ruling, to authorize FCU's to handle member orders to buy or sell securities or to otherwise engage in activities that would require registration by the FCU as a broker-dealer and trigger related responsibilities under Securities and Exchange Commission (SEC) regulations and Federal securities laws. Thus, in order to offer self-directed IRA and Keogh accounts to members, and to serve as custodian for such accounts, it will be necessary for the FCU to have an arrangement with a securities broker-dealer, pursuant to which the broker-dealer receives all buy and sell orders from the member and executes the securities trade.

A review of previous SEC "no action" letters with respect to FCU involvement in brokerage-related activities indicates that FCU's may solicit members to participate in self-directed IRA or Keogh accounts, and will not be required to register, provided that: (1) The FCU does not exercise investment discretion or render investment advice, (2) the broker-dealer performs all brokerage functions and is clearly identified as the one performing such functions, and (3) FCU employees perform only clerical and ministerial functions. Clerical and ministerial functions would include distributing promotional materials to members, assisting members in completing account opening forms, and effecting debits or credits to the member's share account related to the purchase and sale of securities and receipt of dividend income from the securities.

Lastly, under SEC rules, an FCU could share in commissions and, assuming the FCU satisfies the conditions described above, it would not have to register as a broker-dealer. However, Part 721 of the NCUA Rules and Regulations (12 CFR Part 721), concerning FCU insurance and group purchasing activities, would limit the amount of compensation that an FCU could receive. In performing its administrative (ministerial) functions in the executive of its members' buy and sell orders, an FCU could only be reimbursed for its direct and indirect costs related to the administrative services it provides.

Interpretive Ruling and Policy Statement 85–1

Trustees and Custodians of Pension Plans

A Federal credit union may act as trustee or custodian of individual retirement plans of its members established pursuant to the Employee Retirement Income Security Act of 1974 or self-employed retirement plans established to the Self-Employed Individuals Retirement Act of 1962, *provided that*:

(1) All contributions of funds are initially made to a share or share certificate account in the credit union;

(2) Any subsequent transfer of funds to other assets is solely at the direction of the member and the Federal credit union exercises no investment discretion and provides no investment advice with respect to plan assets (i.e., the credit union performs only custodial duties);

(3) The member is clearly notified of the fact that National Credit Union Share Insurance Fund coverage is limited to funds held in share or share certificate accounts of NCUSIF-insured credit unions; and

(4) The Federal credit union complies with all applicable provisions of the Federal Credit Union Act and the National Credit Union Administration Rules and Regulations, and applicable laws and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over such trust or custodial accounts.

By the National Credit Union Administration Board on November 14, 1985.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85-27849 Filed 11-21-85; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AWA-28]

Alteration of VOR Federal Airway V-181; South Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of V-181 located in the vicinity of Yankton, SD. Yankton very high frequency omni-directional radio range-distance measuring equipment (VOR/DME) has been relocated on the Yankton Airport from its present position to a position approximately 1,350 feet north. The only airway change was for V-181W. This action redescribes V-181W in order to ensure the 15° divergence from V-181 on which air traffic control separation criteria is based.

EFFECTIVE DATE: 0901 G.m.t., January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

On December 23, 1983, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter V-181W located in the vicinity of Yankton, SD, (48 FR 56769). Yankton VOR/DME has been relocated on the Yankton Airport from its present position to a position approximately 1,350 feet north. There are several airways that have Yankton VOR in their description. However, because of the short distance to the VOR relocation site, the only airway affected is V-181W due to the 15° separation from the main route requirement for the air traffic control criteria. 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 the notice. Section 71.123 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 alters the description of V-181 located in the vicinity of Yankton, SD. Yankton VOR/DME has been relocated on the Yankton Airport from its present position to a position approximately 1,350 feet north.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-181 [Amended]

By deleting the words "Sioux Falls, SD, including a W alternate via INT Yankton 016° and Sioux Falls 230° radials; Watertown, SD," and substituting the words "Sioux Falls, SD, including a W alternate via INT Yankton 015° and Sioux Falls 230° radials; Watertown, SD."

Issued in Washington, D.C. on November 12, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-27862 Filed 11-21-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWA-23]

Revocation of VOR Federal Airway Restrictions; Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the restrictions to Federal Airways V-95, V-327 and V-567 located in the vicinity of Salt River, AZ. The airway restrictions were added when the Williams 4 Military Operations Area (MOA) was established. These restrictions are no longer required. This action restores controlled airspace for more effective airway usage by the public.

EFFECTIVE DATE: 0901 G.m.t., January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

On September 18, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke airway restrictions on segments of VOR Federal Airways V-95, V-327 and V-567 (50 FR 37866).

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 the notice. Section 71.123 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 revokes airway restrictions on segments of VOR Federal Airways V-95, V-327 and V-567. Williams Air Force Base no longer

utilizes the Williams 4 MOA; therefore, there is no further need for the airway restrictions imposed when the MOA was in use. This action would return airspace for public use.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

PART 71—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (50 FR 14091 and 50 FR 39655), is further amended, as follows:

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-95 [Amended]

By removing the words "The airspace 14,000 feet MSL and above is excluded from 23 NM northeast of Salt River to 22 NM southwest of Winslow, from 1300 GMT to 0200 GMT, Monday through Friday, and other times as advised by a Notice to Airmen."

V-327 [Revised]

From Salt River, AZ, to Flagstaff, AZ.

V-567 [Revised]

From Salt River, AZ, via INT Salt River 006° and Winslow, AZ, 224° radials; 52 miles, 95 MSL; to Winslow.

Issued in Washington, D.C., on November 12, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-27863 Filed 11-21-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 24843; Amdt. No. 1308]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 522(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for

Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument.

Issued in Washington, D.C. on November 15, 1985.

John S. Kern,

Acting Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective January 16, 1986*

Fort Smith, AR—Fort Smith Muni, VOR or TACAN Rwy 25, Amdt. 19
Fort Smith, AR—Fort Smith Muni, VOR/DME or TACAN Rwy 7, Amdt. 9
Fort Smith, AR—Fort Smith Muni, LOC BC Rwy 7, Amdt. 8
Fort Smith, AR—Fort Smith Muni, ILS Rwy 25, Amdt. 19
Fort Smith, AR—Fort Smith Muni, RADAR-1, Amdt. 6
Lake Village, AR—Lake Village Muni, VOR-A, Amdt. 6
Lake Village, AR—Lake Village Muni, VOR/DME-B, Amdt. 4
Camarillo, CA—Camarillo, VOR Rwy 26, Orig
Camarillo, CA—Camarillo, VOR-A, Amdt. 1, Cancelled
Davis, CA—University, VOR Rwy 16, Amdt. 1
Davis, CA—University, VOR-A, Amdt. 1, Cancelled
Madera, CA—Madera Muni, VOR Rwy 30, Amdt. 3
Modesto, CA—Modesto City County Arpt—Harry Sham Fld., NDB Rwy 28R, Amdt. 6
Modesto, CA—Modesto City County Arpt—Harry Sham Fld., ILS Rwy 28R, Amdt. 10
Vacaville, CA—Nut Tree, VOR-A, Amdt. 3
Woodland, CA—Watts-Woodland, VOR-A, Amdt. 4
Kaunakakai Molokai, HI—Molokai, VOR or TACAN-A, Amdt. 12
Idaho Falls, ID—Fanning Field, VOR Rwy 20, Amdt. 7
Idaho Falls, ID—Fanning Field, NDB Rwy 20, Amdt. 7
Idaho Falls, ID—Fanning Field, ILS Rwy 20, Amdt. 6
Vincennes, IN—O'Neal, NDB-A, Amdt. 4
Menominee, MI—Menominee-Marinette Twin County, VOR Rwy 18, Amdt. 8, Cancelled
Menominee, MI—Menominee-Marinette Twin County, VOR-A, Orig
Great Falls MT—Great Falls Intl, VOR Rwy 3, Amdt. 15
Great Falls MT—Great Falls Intl, VOR Rwy 21, Amdt. 8
Great Falls MT—Great Falls Intl, NDB Rwy 34, Amdt. 14
Great Falls MT—Great Falls Intl, ILS Rwy 3, Amdt. 1
Great Falls MT—Great Falls Intl, ILS Rwy 34, Amdt. 18
Cambridge, OH—Cambridge Muni, VOR-A, Orig
Cleveland, OH—Cuyahoga County, VOR-A, Amdt. 1, Cancelled
Cleburne, TX—Cleburne Municipal, RNAV Rwy 33, Amdt. 1
Dallas, TX—Dallas Love Field, VOR/DME Rwy 13R, Amdt. 5
Dallas, TX—Dallas Love Field, LOC BC Rwy 31R, Amdt. 26
Dallas, TX—Dallas Love Field, ILS Rwy 13L, Amdt. 26
Dallas, TX—Dallas Love Field, ILS Rwy 31L, Amdt. 15
Fort Worth, TX—Oak Grove, RNAV Rwy 35, Original
Quincy, WA—Quincy Muni, RNAV Rwy 27, Original
Tacoma, WA—Tacoma Narrows, ILS Rwy 17, Amdt. 5
Mineral Point, WI—Iowa County, NDB Rwy 22, Amdt. 2
Reedsburg, WI—Reedsburg Muni, VOR-A, Amdt. 3

* * * *Effective December 19, 1985*

Farmington, NM—Four Corners Regional, ILS Rwy 25, Original
Astoria, OR—Port of Astoria, VOR Rwy 13, Amdt. 12, Cancelled
Waco, TX—Waco-Madison Cooper, ILS Rwy 19, Amdt. 12
Torrington, WY—Torrington Muni, NDB Rwy 10, Original
Torrington, WY—Torrington Muni, NDB Rwy 28, Original

* * * *Effective November 11, 1985*

Frederick, OK—Frederick Muni, NDB Rwy 35, Amdt. 1

* * * *Effective November 8, 1985*

Bangor, ME—Bangor Intl, ILS Rwy 15, Amdt. 2
Rockland, ME—Knox County Regional, LOC Rwy 3, Amdt. 8
Rockland, ME—Knox County Regional, NDB Rwy 3, Amdt. 7

* * * *Effective November 1, 1985*

Monroe, MI—Custer, VOR-A, Amdt. 1
Monroe, MI—Custer, RNAV Rwy 21, Amdt. 1.

[FR Doc. 85-27865 Filed 11-21-85; 8:45 am]
BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34-22625; 35-23904; IC-14795]

Proposals of Security Holders

AGENCY: Securities and Exchange Commission.

ACTION: Reinstatement of Rule.

SUMMARY: The Commission announces the reinstatement of certain provisions of the shareholder proposal rule, Rule 14a-8. This action changes the percentage thresholds in Rule 14a-8(c)(12), the provision governing the inclusion in registrants' proxy materials of shareholder proposals previously included in such materials, in accordance with an Order issued by the United States District Court for the District of Columbia on September 13, 1985.

EFFECTIVE DATE: November 22, 1985.

FOR FURTHER INFORMATION CONTACT: Cecilia D. Blye, (202) 272-2573, Office of the Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In conformance with the court order, the Commission today announces the

reinstatement of the percentage threshold tests in effect prior to January 1, 1984, for Rule 14a–8(c)(12) [17 CFR 240.14a–8(c)(12) under the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a *et seq.* (1976 and Supp. IV 1980)]. These tests govern inclusion of previously included shareholder proposals.

I. Background

Rule 14a–8 governs the inclusion of shareholder proposals in the proxy statements distributed to security holders by registrants subject to the Commission's proxy rules under the Exchange Act. Prior to August 1983, paragraph (c)(12) of the rule provided that a registrant could omit from its proxy material any shareholder proposal substantially the same as a proposal previously included in the registrant's proxy material for a meeting of security holders held within the preceding 5 calendar years, where the proposal:

1. If Submitted once during such preceding period, received less than 3 percent of the total number of votes cast in regard thereto;

2. If submitted twice during the period, at its second submission received less than 6 percent of the total number of votes cast in regard thereto; or

3. If submitted three or more times during the period, at its most recent submission received less than 10 percent of the total number of votes cast in regard thereto.

On August 16, 1983, the Commission adopted a number of amendments to Rule 14a–8, including amendments to paragraph (c)(12) of the rule.[1] These amendments became effective January 1, 1984. Rule 14a–8(c)(12) was amended to apply to shareholder proposals relating to "substantially the same subject matter" as proposals previously submitted to security holders in a registrant's proxy material. The rule also was revised to increase the threshold percentages for resubmission from 3 percent to 5 percent for proposals submitted only once previously, and from 6 percent to 8 percent for proposals twice previously submitted. The percentage required for shareholder proposals previously submitted three or more times remained the same.

On Decemer 19, 1984, several shareholder proponents filed suit in the United States District Court for the District of Columbia, seeking to have the higher threshold percentage tests vacated and the lower percentage requirements previously in effect reinstated.[2] On September 13, 1985, the district court granted the plaintiff's motion for summary judgment. The court issued an order vacating the higher percentage thresholds then in effect under Rule 14a–8(c)(12) and directing the Commission to reinstate the percentage thresholds in effect prior to January 1, 1984.

II. Discussion of Reinstated Rule 14a–8

In accordance with the order of the district court, the threshold percentage tests in effect under Rule 14a–8(c)(12) prior to January 1984 are hereby reinstated. Accordingly, the rule provides that a proposal will be eligible for resubmission if it receives a 3 percent vote the first time it is included in a registrant's proxy material, or a 6 percent vote the second time it is included. The Commission will monitor the effect of the reinstated rule during this proxy season and determine thereafter whether it is appropriate to publish for public comment further changes in the threshold percentage tests for resubmission of shareholder proposals under Rule 14a–8(c)(12).

It should be noted in connection with the change in the Rule 14a–8(c)(12) percentages that pursuant to section 23(a)(1) of the Exchange Act, registrants who had previously omitted shareholder proposals in good faith in conformity with the vacated percentages while they were in effect are not subject to Exchange Act liability for such action. Further, the staff's interpretive views under Rule 14a–8(c)(12) will remain unchanged except as to the threshold percentage tests.

III. List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

IV. Statutory Authority and Findings

The Commission hereby adopts the amendments to Rule 14a–8 pursuant to its statutory authority under sections 14(a) and 23(a) of the Securities Exchange Act of 1934, sections 12(e) and 20(a) of the Public Utility Holding Company Act of 1935, and sections 20(a) and 38(a) of the Investment Company Act of 1940. As required by section 23(a) of the Exchange Act, the Commission has considered the impact that this rulemaking action would have on competition and has concluded that the amendments would impose no significant burden on competition not necessary or appropriate in furtherance of the purpose of the Exchange Act.

V. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows: (Citations before * * * indicate general rulemaking authority).

Authority: Sec. 23, 48 Stat. 901, as amended 15 U.S.C. 78w. * * * § 240.14a–8 also issued under Section 14, 15 U.S.C. 78n.

2. In § 240.14a–8, paragraphs (c)(12) (i) and (ii) are revised to read as follows:

§ 240.14a–8 Proposals of security holders.

* * * * *

(c) * * *

(12) * * *

(i) If the proposal was submitted at only one meeting during such preceding period, it received less than three percent of the total number of votes cast in regard thereto; or

(ii) If the proposal was submitted at only two meetings during such preceding period, it received at the time of its second submission less than six percent of the total number of votes cast in regard thereto; or

* * * * *

By the Commission.

John Wheeler,

Secretary.

November 14, 1985.

[FR Doc. 85–27891 Filed 11–21–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 375 and 385

[Docket No. RM86–1–000]

Revisions to Rules of Practice and Procedure and Delegation to the Chief Administrative Law Judge; Order No. 437

Issued November 13, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: To increase administrative efficiency and reduce the burden on participants to certain proceedings, the Federal Energy Regulatory Commission (Commission) is issuing a final rule amending its Rules of Practice and Procedure to delegate to the Chief

[1] See Release No. 34–20091 (August 23, 1983), 48 FR 38218. The revisions were proposed in Release No. 34–19135 (October 14, 1982), 47 FR 47420.

[2] *United Church Board For World Ministries* v. *SEC*, No. 84–3273 (D.D.C. September 13, 1985).

Administrative Law Judge authority to change the close-of-record date, for good cause, in proceedings under Subpart E of Part 385 of the Commission's rules.

EFFECTIVE DATE: November 13, 1985.

FOR FURTHER INFORMATION CONTACT: Penelope S. Ludwig, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8483.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is delegating to the Chief Administrative Law Judge (Chief Judge) the authority to change, for good cause shown, the close-of-record date in proceedings under Subpart E of Part 385[1] of the Commission's rules of practice and procedure.

II. Discussion

Recently the Commission has issued numerous orders setting the appropriateness of certain filings for hearing,[2] a date by which the record in the proceeding must close, and directing the Presiding Administrative Law Judge (Presiding Judge) to conduct a hearing on an expedited basis to meet that record-closing date. However, in several of these proceedings, participants have sought an extension or a suspension of the record closing date.[3]

Since the Commission set the closing date, only the Commission is authorized to modify the close-of-record date in these proceedings, under the Commission's current practice. Any request for a change of the date requires participants to make motions to the Presiding Judge who must in turn forward the request to the Chief Judge who certifies the motion to the Commission along with his recommendation as to the proper disposition of the request.

This procedure results in participants filing numerous documents for immediate consideration of the judges and the Commission. The Commission finds that the current procedures for a modification to the close-of-record date are burdensome and cause undue delay. Therefore, to expedite the processing of such motions, reduce the burden on the participants, and make more efficient use of the participants' resources, the Commission is delegating to the Chief Judge authority to change the close-of-record date for good cause shown. Accordingly, requests for modification to the close-of-record date are to be made directly to the Chief Judge, who will now have the authority to change the close-of-record date for good cause. This final rule codifies this delegation of authority in 18 CFR 375.304(d).

Finally, the rule modifies Rule 503[4] of the Commission's rules of practice and procedure to codify the procedures for requesting a change in a close-of-record date set by the Commission. Decisions to extend the close-of-record date under this delegation may be appealed only under Rule 1902.[5]

III. Effective Date

Pursuant to Section 4 of the Administrative Procedure Act, 5 U.S.C. 553(b) (1982), this rule is issued without prior notice and comment because it is a rule of agency organization, procedure, or practice that will not alter the substantive rights or interests of any interested persons. Specifically, this rule only delegates to the Chief Judge authority to modify the close-of-record date for good cause. In addition, any ruling by the Chief Judge on a request to modify a close-of-record date may be appealed.

Generally, a rule becomes effective not less than 30 days after it is published in the Federal Register. A rule may become effective sooner if it is an interpretive rule or policy statement, if it relieves a restriction or grants an exemption, or if the agency finds good cause to do so.[6] The Commission finds that this rule will expedite proceedings and make more effective use of the Commission's resources and will benefit participants in Commission proceedings by removing restrictions imposed by current regulations. For these reasons, the Commission finds good cause to make this rule effective on issuance.

List of Subjects

18 CFR Part 375

Authority delegations (Government agencies), seals, insignia, Sunshine Act.

18 CFR Part 385

Administrative practice and procedure.

In consideration of the foregoing, the Commission amends Parts 375 and 385 of Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission. Commissioners Trabandt and Naeve voted present.

Lois D. Cashell,

Acting Secretary.

PART 375—[AMENDED]

1. The authority citation for Part 375 continues to read as follows:

Authority: Department of Energy Organization Act (42 U.S.C. 7101–7352) E.O. 12009, 3 CFR, 1977 Comp., p. 142; Administrative Procedure Act (5 U.S.C. 553); Federal Power Act (16 U.S.C. 791–828c), as amended; Natural Gas Act (15 U.S.C. 717–717w), as amended; Natural Gas Policy Act of 1978 (15 U.S.C. 3301 et seq.); Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) unless otherwise noted.

2. Section 375.304 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by adding a new paragraph (b) to read as follows:

§ 375.304 Delegations to the Administrative Law Judges.

* * * * *

(b) For those proceedings pending under Subpart E of Part 385, the Chief Administrative Law Judge may consolidate for hearing two or more proceedings on any or all issues, sever two or more proceedings or issues in a proceeding, and extend any close-of-record date ordered by the Commission in a proceeding.

* * * * *

PART 385—[AMENDED]

3. The authority citation for Part 385 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717z (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

4. Section 385.503 is amended by revising the title, by redesignating the existing paragraph as "(a)", and by adding a new paragraph (b) to read as follows:

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[1] 18 CFR Part 385, Subpart E (1985).

[2] Texas Gas Transmission Corp., 31 FERC ¶ 61,236 (1985); Penn-York Energy Corp., 31 FERC ¶61,236 (1985); U–T Offshore Sys., 29 FERC ¶ 61,352 (1984); KN Energy Sys., Inc., 29 FERC ¶ 61,265 (1984).

[3] Texas Gas Transmission Corp., 33 FERC ¶ 63,000 (1985); Penn-York Energy Corp., 32 FERC ¶ 61,209 (1985); U–T Offshore Sys., 31 FERC ¶ 61,225 (1985); High Island Offshore Sys., 31 FERC ¶ 61,222 (1985).

[4] 18 CFR 385.503 (1985). The rule also codifies in new § 375.304 the consolidation and severance powers of the Chief Judge which were previously only referenced in § 385.503.

[5] 18 CFR 1902 (1985).

[6] U.S.C. 553(d) (1982).

§ 385.503 Consolidation, severance and extension of close-of-record date by Chief Administrative Law Judge (Rule 503)

* * * * *

(b) If the Commission orders that the presiding officer close the record in any proceeding by a specific date, the Chief Administrative Law Judge may, upon motion or otherwise, extend the close-of-record date for good cause. This staff action may be appealed to the Commission only under Rule 1902.

[FR Doc. 85-27933 Filed 11-21-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 107

[Docket No. 82N-0270]

Exempt Infant Formula

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Infant Formula Act of 1980 exempts from some of its requirements specialty infant formulas that are intended for use by infants with special medical or dietary needs. The Food and Drug Administration (FDA) is establishing the terms and conditions under which those infant formulas will continue to be exempt. FDA is also establishing quality control, nutrient, and labeling requirements for exempt formulas.

EFFECTIVE DATE: February 20, 1986. For additional information concerning this effective date, see "Paperwork Reduction Act of 1980" appearing in the preamble of this document.

FOR FURTHER INFORMATION CONTACT: Nicholas Duy, Center for Food Safety and Applied Nutrition (HFF-204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3117.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of July 12, 1983 (48 FR 31875), FDA published a proposed rule (21 CFR Part 107) for exempt infant formulas (those formulas represented and labeled for use by an infant who has an inborn error of metabolism or a low birth weight or who otherwise has an unusual medical or dietary problem). The agency proposed to create two broad categories of exempt formulas: (1) Those formulas that are generally available at the retail level and (2) those formulas that are not generally available at the retail level. The agency proposed that manufacturers of exempt infant formula that are generally available at the retail level be required to meet the quality control requirements for regular infant formula unless specific deviations are justified. Manufacturers of infant formulas that are not generally available at the retail level would be required to establish an appropriate quality control procedure.

The agency further proposed that: (1) All exempt formulas comply with the nutrient and labeling requirements applicable to regular infant formulas, unless the manufacturer justifies specific deviations; (2) manufacturers submit to FDA detailed information about each exempt infant formula produced; and (3) after reviewing submitted information and other information available to the agency, FDA may impose additional or modified requirements for a product or withdraw a product's exempt status.

The agency received 34 letters, each containing 1 or more comments, in response to the proposal from local governments, health care professionals, trade organizations, State and county departments of health, professional organizations, and consumer advocacy organizations and consumers. Most of the comments supported the overall proposal while some comments made various suggestions. Several comments did not address the issues raised by the proposal and are not addressed below.

In response to a comment, FDA added a provision to clarify that manufacturers must notify FDA of certain formulation or processing changes. The comments and the agency's responses are as follows:

General Comments

1. One comment objected to the exemption of any infant formulas.

The agency advises that Congress specifically exempted in the Infant Formula Act of 1980 those infant formulas represented and labeled for use by an infant who has an inborn error of metabolism or low birth weight, or who otherwise has an unusual medical or dietary problem. Moreover, some infants that have these medical conditions cannot survive or would become critically ill without certain specialty infant formulas that cannot meet all nutrient requirements for "regular" infant formulas.

2. A number of comments suggested that regular infant formulas and exempt infant formulas be regulated in the same manner. These comments were concerned that the agency would permit relaxed requirements for labeling, quality control, and nutrient standards for exempt infant formulas.

The agency disagrees with these comments. FDA is not regulating exempt infant formulas in the same manner that it regulates regular infant formulas because exempt formulas frequently have specialized nutrient requirements intended to address specific medical problems. In addition, by creation of a separate category of exempt infant formulas in the Infant Formula Act of 1980, Congress recognized the need for a different regulatory approach for these infant formulas. For example, special label statements may be necessary to ensure appropriate use of these infant formulas and modified quality control procedures may need to be developed because these infant formulas may be inherently difficult to manufacture or have unusual manufacturing requirements.

Congress intended that the "conditions on exemptions * * * should ensure that [exempt] formulas are manufactured to the same high standards of quality required of formulas for normal infants." (S. Rept. No. 96-916, 96th Cong., 2d Sess. 10 (August 26, 1980) and H. Rept. No. 96-936, 96th Cong., 2d Sess. 10 (May 12, 1980)). Thus, the agency will permit deviations from the nutrient and labeling requirements that apply to regular formulas only when manufacturers have submitted sufficient medical, nutritional, scientific, or technological rationale to support the deviations. In addition, for exempt formulas that are generally available at the retail level, manufacturers will have to justify any deviations from the quality control requirements that apply to regular formulas.

3. One comment stated that the proposal would virtually repeal the exemptions granted by Congress in the Infant Formula Act of 1980 by establishing terms and conditions which subject exempt infant formulas to the full scope of the requirements of that act.

The agency disagrees. Section 412(f)(2) of the Infant Formula Act of 1980 states that "the Secretary may by regulation establish terms and conditions for the exemption of an infant formula from the requirements of subsections (a) and (b). An exemption of an infant formula under paragraph (1) may be withdrawn by the Secretary if such formula is not in compliance with applicable terms and conditions * * *."

As discussed in the preamble to the proposal, the agency believes that the provisions of the final rule adequately assure the quality of exempt infant formulas, while avoiding excessive regulation of such products. Contrary to

the comment's assertion, the full scope of the Infant Formula Act of 1980 will not be applied to all exempt infant formulas. Manufacturers of certain types of exempt infant formulas will be permitted to use alternative quality control procedures, and manufacturers of all exempt infant formulas may deviate from other requirements when the deviations are justified.

4. One comment objected to the proposal because requiring the submission of information in support of deviations would discourage the development and availability of new specialty infant formulas and possibly eliminate needed existing exempt infant formulas.

The agency disagrees. Providing this information to the agency should not be a significant burden to the manufacturer because the manufacturer must have the information in its possession in order to make sound decisions on the formulation, manufacture, and labeling of an exempt infant formula. The Center for Food Safety and Applied Nutrition will review submitted information in support of deviations and withdraw exemptions only when the agency concludes that: (1) Quality control procedures are not adequate to ensure that the formula contains all necessary nutrients; (2) deviations in nutrient levels are not supported by generally accepted scientific, nutritional, or medical rationale; (3) deviations from labeling requirements are not necessary or additional labeling is necessary to provide appropriate directions for preparation and use of the infant formula.

5. One comment suggested that a draft regulation previously submitted by the Infant Formula Council [a trade association that represents infant formula manufacturers] be substituted in its entirety for FDA's proposal.

The agency has considered the Infant Formula Council's recommendation. Based on this recommendation the agency developed the two-tier concept. As indicated in paragraph 2 of this document, Congress has stated that "conditions on exemptions * * * should ensure that such formulas are manufactured to the same high standards of quality as required of formulas for normal infants." The agency did not adopt the Infant Formula Council's recommendation in its entirety because it did not include any significant regulatory requirements through which FDA could ensure this same high standard of quality for exempt infant formulas.

6. One comment suggested that exempt infant formulas not be sold at the retail level.

The agency advises that Congress has not given it the legal authority to prohibit the sale of a food or the authority to seize a food unless it is adulterated or is misbranded. Furthermore, FDA has no data to suggest that exempt infant formulas present a safety hazard when appropriate quality control procedures and labeling are used. Therefore, the agency has no legal or scientific basis for prohibiting their sale at the retail level.

Definitions

7. One comment suggested that the definition of exempt infant formula include only those formulas that are "intended for commercial or charitable distribution" to distinguish them from those products used in clinical studies or other experimental studies.

The agency agrees and has revised § 107.3[a] accordingly.

8. One comment suggested revising the definition of manufacturer (§ 107.3[b]) so that the words "infant formula" are substituted for the word "product."

The agency agrees and has revised § 107.3(b) accordingly.

Terms and Conditions

9. One comment suggested abolishing the two-tier system [that distinguishes infant formulas that are generally available at the retail level (§ 107.50(b)) from those that are not generally available at the retail level (§ 107.50(c)) because both categories are subject to virtually the same requirements.

The agency disagrees. The agency believes that this two-tier system best addresses Congress' dual concern about: (1) The need to make special infant formulas available without the imposition of cumbersome regulations which may discourage formula manufacturers from committing resources into this vital public service, and (2) ensuring that such formulas are manufactured to the same high standards of quality required for formulas for normal infants.

The agency also believes that exempt infant formulas that are not generally available at the retail level are more likely to require alternative quality control procedures because of their unique nutrient content or their production in smaller quantities, which may lead to unique processing procedures. This two-tier system will help ensure their continued development and availability for a restricted market. For these reasons, the agency concludes that a more flexible approach to quality control for these products is warranted.

10. One comment suggested that the second sentence in § 107.50(b)(1) be deleted. The comment contended that FDA should not characterize medical or dietary conditions as not clinically serious or life-threatening unless there is scientific support for its characterization.

The agency is not deleting this sentence from the final rule. For example, some exempt infant formulas that are generally available to the public at the retail level are represented and labeled for use for the dietary management of carbohydrate intolerances or impaired fat absorption. FDA does not consider these conditions to be clinically serious.

11. One comment opposed the submission of labeling in order to retain the exempt status of an infant formula.

The agency advises that labeling that may describe in greater detail than the label the product's intended uses is necessary to determine all uses that are being promoted for an infant formula. With this information, the agency will be in a better position to determine if the nutrient content and formulation are useful in the dietary management of each of the uses claimed. Therefore, the requirement for submission of labeling has been retained.

12. One comment suggested that notification be submitted 90 days in advance of any change in composition, quality control procedures, nutrient specifications, or labeling.

The agency agrees that it should be notified before any change in ingredients or processes that may result in an adverse impact on levels of nutrients or the availability of nutrients is instituted. The agency considers this notification requirement to be implicit in proposed § 107.50(b)(4). However, in the interest of clarity the agency has redesignated proposed § 107.50(b)(4) as § 107.50(b)(5) and added a new paragraph (b)(4) in the final rule to include explicitly this requirement.

However, the agency does not believe that it is necessary to require notification 90 days in advance of reformulation or processing changes. Similarly, the agency is also not requiring agency notification for changes in quality control procedures or labeling. Section 412(b)(3) of the Infant Formula Act of 1980 contains a notification requirement for regular infant formulas. That provision does not require advance notice of reformulation or processing changes, or any notice of changes in quality control procedures or labeling.

13. One comment asserted that requiring the submission to FDA of the

medical, nutritional, scientific, or technological rationale in support of a requested deviation constitutes premarket clearance, which is manifestly beyond the authority granted by the Infant Formula Act of 1980.

The agency disagrees. Infant formulas that are represented and labeled for use by an infant that has an inborn error of metabolism, low birth weight, or otherwise has an unusual medical or dietary problem are, by the terms of the Infant Formula Act of 1980, exempt infant formulas. Written approval by the agency is not required before marketing may be initiated for these infant formulas. As provided for in section 412(f)(2) of the Infant Formula Act of 1980, the agency is merely providing procedures for manufacturers to notify the agency of their exempt infant formulas and the reasons for the need for an exemption. If those reasons conform to generally accepted scientific, nutritional, or medical rationale, exempt status will not be withdrawn.

14. One comment recommended that FDA require manufacturers to submit "medical, nutritional, scientific, *and* technological rationale" in support of deviations from requirements of the Infant Formula Act of 1980 or agency regulations, in lieu of the proposed requirement for submitting the "medical, nutritional, scientific, *or* technological rationale."

The agency is not revising § 107.50(b)(5) and (c)(5) because there will be submissions for which all of this information will not be appropriate. For example, in some instances a technological rationale for a deviation will not exist.

15. One comment suggested that the medical, nutritional, scientific, or technological rationale submitted to support deviations include summaries of animal and human clinical investigations undertaken to support the safety and appropriateness of the infant formula.

The agency considers data from animal and human clinical investigations to be part of the medical, nutritional, scientific, or technological rationale to be submitted in support of a deviation. However, to clarify any misunderstanding, the agency is revising § 107.50(b)(5) (proposed § 107.50(b)(4)) and § 107.50(c)(5) to refer to appropriate animal or human clinical studies as part of a manufacturer's submission.

16. One comment objected to proposed § 107.50(d) because it would provide for the withdrawal of an exemption for an exempt infant formula that is properly labeled, was manufactured using acceptable quality control procedures, and has a nutrient level that is safe but may not conform to generally accepted scientific, nutritional, or medical rationale for treatment of a medical condition. The comment recommended that an exemption be withdrawn only upon a determination that the product, as formulated, presents a risk to health.

The agency disagrees. The exemption provision in the Infant Formula Act of 1980 is intended to allow deviations from the standards set by the agency for regular infant formulas only for the dietary management of an inborn error of metabolism, low birth weight, or other unusual medical or dietary problem. Thus, deviations or exemptions from the Infant Formula Act of 1980 and regulations promulgated by the agency must be justified in terms of some medical or dietary need. Exemptions that are not so justified are not authorized by the Infant Formula Act of 1980 and would serve no public health purpose. In addition, if risk to health was the only criterion for withdrawing exemptions, this would shift the burden of making this determination, and therefore its justification, to the agency. FDA does not believe that Congress intended such a result. Therefore, FDA has not revised § 107.50(d)(1) based on this comment.

17. One comment suggested that the statement "For Use By Infants Who Have Inborn Errors of Metabolism or Low Birth Weight, or Who Otherwise Have Unusual Medical or Dietary Problems" appear on the label, labeling, and advertising of an exempt infant formula. Several comments suggested requiring a clear label declaration that the formula is an exempt infant formula or a label statement of the specific dietary problem for which the formula is intended.

The agency agrees with the thrust of these comments and will require clear label statements to indicate the special nature of each exempt infant formula. However, the agency is not requiring one label statement for all exempt infant formulas because it may not be applicable to all products. Therefore, the agency is not making the suggested change and will consider label declarations on a case-by-case basis.

18. One comment suggested that scientific, technical, and medical personnel, including at least one pediatrician outside the Center for Food Safety and Applied Nutrition, be included in the review process for manufacturers' submissions.

The agency advises that the Center for Food Safety and Applied Nutrition does utilize personnel (including pediatricians) throughout the agency and will, when the situation warrants, continue to do so.

19. One comment suggested that the final determination to continue or terminate an exemption be made by the Commissioner of Food and Drugs and not the Director of the Center for Food Safety and Applied Nutrition.

The agency advises that the Commissioner upon an appeal under § 107.50(d)(2)(i) makes the final decision for the agency. Therefore, no changes are necessary based on this comment.

20. One comment suggested that § 107.50(d)(2)(ii) be revised so that a product would not be required to comply with the nutrient requirements of the Infant Formula Act of 1980 when its exempt status is withdrawn.

The agency disagrees. When a product does not have exempt status or when exempt status is withdrawn, the manufacturer must comply with all requirements and regulations governing infant formulas, including the nutrient requirements of the Infant Formula Act of 1980. Therefore, FDA has not revised § 107.50(d)(2)(ii).

21. One comment suggested that § 107.50(d)(2)(ii) be revised to read "the manufacturer shall comply with the nutrient requirements of section 412(a)(2) of the act" rather than "section 412 of the act or of regulations promulgated under section 412(a)(2) of the act."

The agency advises that section 412(a)(2) of the Infant Formula Act of 1980 does not contain nutrient requirements. This section merely gives the agency the authority to promulgate regulations to revise the nutrient requirements set out in section 412(g) of that act. Therefore, the suggested change is not reflected in this final rule.

22. One comment suggested that § 107.50(d)(2)(iii) be revised by deleting the word "may" so that a product's exempt status will be withdrawn only upon a determination of a health hazard and not on the speculation that a health hazard may exist. The comment stated that this is analogous to section 412(c) of the Infant Formula Act of 1980, in which Congress decided that reporting by a manufacturer of an adulterated or misbranded product should be limited to those circumstances presenting a risk to health.

The agency disagrees. The agency does not believe that the requirements of § 107.50(d)(2)(iii) are analogous to the requirements of section 412(c) of the Infant Formula Act of 1980. Deleting the word "may" in § 107.50(d)(2)(iii) would place the burden of proof on determining a hazard to health on FDA. FDA does not believe that Congress

intended such a result. In comparison, section 412(c) of the act pertains to the legal obligations of a manufacturer. Therefore, FDA has not revised § 107.50(d)(2)(iii) to include this suggestion.

23. One comment suggested that the word "may" be deleted in § 107.50(e)(2) in the sentence "* * * or when there is an exempt infant formula that is otherwise adulterated or misbranded and that may present a risk to human health." The comment stated that deletion of the word "may" would make this section consistent with the requirements of section 412(c)(1)(B) of the Infant Formula Act of 1980, which reflects Congress' decision that such reporting should be limited to those circumstances presenting a risk to health, and that such reports should not be based upon speculation.

The agency agrees with the thrust of this comment and has revised § 107.50(e)(2) to be consistent with section 412(c)(1)(B) so that the section now reads "* * * or when there is an exempt infant formula that may be otherwise adulterated or misbranded and if so adulterated or misbranded presents a risk to human health."

24. One comment suggested that the agency make a final determination of the acceptability of information submitted by the manufacturer within 60 days of submission. The comment stated that this would minimize the possibility of the agency having to withdraw the exempt status of an infant formula after distribution has begun and that such a time frame would allow manufacturers to plan the orderly manufacture, packaging, and distribution of an exempt infant formula.

The agency disagrees. Exemptions to the Infant Formula Act of 1980 are provided by the act itself. The agency need only respond to a submission if it does not comply with the criteria established in this final rule. The agency does not believe it is appropriate to require a response prior to marketing each product because this would constitute procedures resembling premarket clearance.

25. One comment suggested the creation of an advisory committee, within the American Academy of Pediatrics, to review exempt infant formulas for appropriateness of their intended uses and nutritional adequacy.

The agency agrees that this is one way for outside experts to review information submitted in support of continued exemptions, and is considering it along with other alternatives.

Economic Considerations

In accordance with Executive Order 12291, FDA has analyzed the economic impacts of this final rule. In a previous action FDA determined that the economic impacts of rules governing quality control and labeling of infant formulas, including both exempt and nonexempt formulas, were not major as defined by the Order. The economic impact of this final rule, representing a part of that total, is estimated to be a one-time cost of $20,000. This amount represents the cost of data submission and label modification. The total cost associated with this final rule is also insufficient to warrant designation as a major rule under any of the criteria specified in Executive Order 12291.

Furthermore, in accordance with the Regulatory Flexibility Act, the agency has considered the effect that this final rule will have on small entities, including small businesses, and has concluded that small firms will not bear excessive or unreasonable burdens as a result of these regulations. The agency estimates that not more than five firms, including both large and small, will be immediately affected by this final rule, and the likelihood of numerous future entrants in this product line is minimal. Moreover, the total cost of this final rule on all active exempt formula manufacturers is estimated to be $20,000. Therefore, the agency certifies in accordance with section 605(b) of the Regulatory Flexibility Act that there will be no significant economic impact on a substantial number of small entities resulting from this action. A copy of the threshold assessment may be seen in the Dockets Management Branch.

Environmental Considerations

The agency has determined pursuant to 21 CFR 25.24(b)(12) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act of 1980

Section 107.50 of this final rule contains collection of information requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910-0158.

In response to comments, FDA amended § 107.50 of this final rule by adding new paragraph (b)(4) to make explicit a notification requirement that was implicit in the proposal. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirement contained in new § 107.50(b)(4) in this final rule will be submitted for approval to OMB. This requirement will not be effective until FDA obtains OMB approval. FDA will publish a notice concerning OMB approval of this requirement in the **Federal Register** prior to February 20, 1986.

List of Subjects in 21 CFR Part 107

Food labeling, Infants and children, Infant formula, Nutrient information, Quality control.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Part 107 is amended as follows:

PART 107—INFANT FORMULA

1. The authority citation for 21 CFR Part 107 is revised to read as follows:

Authority: Secs. 201(n) and (aa), 403(a) and (j), 412, 701, 52 Stat. 1041 as amended, 1047–1048 as amended, 1055–1056 as amended, 94 Stat. 1190–1193 (21 U.S.C. 321(n) and (aa), 343(a) and (j), 350a, 371); 21 CFR 5.11; § 107.100 issued only under secs. 201(aa), 412, 701(a), 52 Stat. 1055, 94 Stat. 1190–1193 (21 U.S.C. 321(aa), 350a, 371(a)); 21 CFR 5.11; Subparts A and C are issued under secs. 201(n) and (aa), 403(a), 412, 701(a), 52 Stat. 1041 as amended, 1047 as amended, 1055, 94 Stat. 1190 (21 U.S.C. 321(n) and (aa), 343(a), 350a, 371(a)); 21 CFR 5.11.

2. By adding Subparts A and C to read as follows:

Subpart A—General Provisions

Sec.
107.3 Definitions.
* * * * *

Subpart C—Exempt Infant Formulas

107.50 Terms and conditions.
* * * * *

Subpart A—General Provisions

§ 107.3 Definitions.

The following definitions shall apply, in addition to the definitions contained in section 201 of the Federal Food, Drug, and Cosmetic Act (the act):

Exempt formula. An exempt infant formula is an infant formula intended for commercial or charitable distribution that is represented and labeled for use by infants who have inborn errors of metabolism or low birth weight, or who otherwise have unusual medical or dietary problems.

Manufacturer. A manufacturer is a person who prepares, reconstitutes, or otherwise changes the physical or chemical characteristics of an infant formula or packages the infant formula in containers for distribution.

References. References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

* * * * *

Subpart C—Exempt Infant Formulas

§ 107.50 Terms and conditions.

(a) *Terms and conditions.* Section 412(f)(1) of the act exempts from the requirements of section 412(a), (b), and (c)(1)(A) of the act infant formulas that are represented and labeled for use by an infant who has an inborn error of metabolism or low brith weight or who otherwise has an unusual medical or dietary problem, if such formulas comply with regulations prescribed by the Secretary. The regulations in this subpart establish the terms and conditions that a manufacturer must meet with respect to such infant formulas.

(b) *Infant formulas generally available at the retail level.* (1) These exempt infant formulas can generally be purchased from retail store shelves that are readily available to the public. Such formulas are also typically represented and labeled for use to provide dietary management for diseases or conditions that are not clinically serious or life-threatening, even though such formulas may also be represented and labeled for use in clinically serious or life-threatening disorders.

(2) Except as provided in paragraph (b)(4) and (5) of this section, an infant formula manufacturer shall, with respect to each formula covered by this paragraph, comply with the nutrient requirements of section 412(g) of the act or of regulations promulgated under section 412(a)(2) of the act, the quality control procedure requirements of Part 106, and the labeling requirements of Subpart B of this part.

(3) To retain the exempt status of an infant formula covered by this paragraph, the manufacturer shall submit to the Food and Drug Administration (FDA), at the address specified in paragraph (e)(1) of this section, on or before May 21, 1986, or on or before the 90th day before the first processing of the infant formula for commercial or charitable distribution, whichever occurs later, the label and other labeling of the infant formula, a complete quantitative formulation for the infant formula, and a detailed description of the medical conditions for which the infant formula is represented. FDA will review the information under paragraph (d) of this section.

(4) To retain the exempt status of an infant formula covered by this paragraph, when any change in ingredients or processes that may result in an adverse impact on levels of nutrients or availability of nutrients is instituted, the manufacturer shall submit to FDA at the address specified in paragraph (e)(1) of this section, before the first processing of the infant formula, the label and other labeling of the infant formula, a complete quantitative formulation for the infant formula, a detailed description of the reformulation and the rationale for the reformulation, a complete description of the change in processing, and a detailed description of the medical conditions for which the infant formula is represented. FDA will review that information under paragraph (d) of this section.

(5) A manufacturer may deviate from the requirements of paragraph (b)(2) of this section only with respect to those specific requirements for which it submits to FDA, at the address specified in paragraph (e)(1) of this section, the medical, nutritional, scientific, or technological rationale (including any appropriate animal or human clinical studies). FDA will review that information under paragraph (d) of this section.

(c) *Infant formulas not generally available at the retail level.* (1) These exempt infant formulas are not generally found on retail shelves for general consumer purchase. Such formulas typically are prescribed by a physician, and must be requested from a pharmacist or are distributed directly to institutions such as hospitals, clinics, and State or Federal agencies. Such formulas are also generally represented and labeled solely to provide dietary management for specific diseases or conditions that are clinically serious or life-threatening and generally are required for prolonged periods of time. Exempt infant formulas distributed directly to institutions such as hospitals, clinics, and State or Federal agencies that are of the same formulation as those generally available at the retail level are subject to the requirements of paragraph (b) of this section rather than to the requirements of this paragraph.

(2) Except as provided for in paragraph (c)(5) of this section, an infant formula manufacturer shall, with respect to each formula covered by this paragraph, comply with the nutrient requirements of section 412(g) of the act or of regulations promulgated under section 412(a)(2) of the act, and the labeling requirements of Subpart B of this part.

(3) Each manufacturer of an infant formula covered by this paragraph shall establish quality control procedures designed to ensure that the infant formula meets applicable nutrient requirements of this section, including any special nutritional characteristics for the specific disorders or conditions for which the formula is represented for use. Each manufacturer shall maintain records of such quality control procedures sufficient to permit a public health evaluation of each manufactured batch of infant formula and shall permit any authorized FDA employee at all reasonable times to have access to and to copy and verify the records referred to in this paragraph.

(4) To retain the exempt status of an infant formula covered by this paragraph, the manufacturer shall submit the information required by paragraph (b)(3) and (4) of this section.

(5) A manufacturer may deviate from the requirements of paragraph (c)(2) of this section only with respect to those specific requirements for which it submits to FDA, at the address specified in paragraph (e)(1) of this section, the medical, nutritional, scientific, or technological rationale (including any appropriate animal or human clinical studies). FDA will review that information under paragaraph (d) of this section.

(6) The requirements of this section do not apply to an infant formula specially and individually prepared for one or more specific infants on a physician's request.

(d) *FDA review of exempt status.* (1) FDA's Center for Food Safety and Applied Nutrition will review information submitted by infant formula manufacturers under paragraph (b) (3), (b) (4), or (c) (4) of this section. On the basis of such review and other information available to the agency, the Center for Food Safety and Applied Nutrition may impose additional conditions on, or modify requirements for, the quality control procedures, nutrient specifications, or labeling of an infant formula, or withdraw a product's exempt status. Such determinations will be made by the Director of the Center for Food Safety and Applied Nutrition.

(2)(i) If after completing its review of all information submitted, the Center for Food Safety and Applied Nutrition concludes that additional or modified quality control, nutrient, or labeling requirements are needed, or that a product's exempt status is withdrawn, the Center for Food Safety and Applied Nutrition will so notify the manufacturer

and this notification will specify the reasons therefor. Upon receipt of this notification, the manufacturer has 10 working days to have the decision reviewed under § 10.75 by the office of the Commissioner of Food and Drugs. A determination by the Director of the Center for Food Safety and Applied Nutrition that is not appealed becomes a final agency decision.

(ii) After a final decision by the Director or by the office of the Commissioner that a product's exempt status is withdrawn, the manufacturer shall comply with the nutrient requirements of section 412(g) of the act or of regulations promulgated under section 412(a)(2) of the act, the quality control requirements of Part 106, and the labeling requirements of Subpart B of this part.

(iii) The compliance date for the withdrawal of a product's exempt status or the imposition of additional or modified quality control, nutrient, or labeling requirements is 60 calendar days after issuance of the final decision except as otherwise provided for reasons stated in the decision. If the agency determines that a health hazard may exist and so notifies the manufacturer, withdrawal of a product's exempt status shall be effective on the date of receipt of notification from the Director of the Center for Food Safety and Applied Nutrition. Additional or modified requirements, or the withdrawal of an exemption, apply only to those formulas that are manufactured after the compliance date. A postponement of the compliance date may be granted for good cause.

(3) FDA may decide that withdrawal of an exemption is necessary when, on the basis of its review under paragraph (d)(1) of this section, it concludes that quality control procedures are not adequate to ensure that the formula contains all required nutrients, that deviations in nutrient levels are not supported by generally accepted scientific, nutritional, or medical rationale, or that deviations from Subpart B of this part are not necessary to provide appropriate directions for preparation and use of the infant formula, or that additional labeling information is necessary.

(4) FDA will use the following criteria in determining whether deviations from the requirements of this subpart are necessary and will adequately protect the public health:

(i) A deviation from the nutrient requirements of section 412(g) of the act or of regulations promulgated under section 412(a)(2) of the act is necessary to provide an infant formula that is appropriate for the dietary management of a specific disease, disorder, or medical condition;

(ii) For exempt infant formulas subject to paragraph (b) of this section, a deviation from the quality control procedures requirements of Part 106 is necessary because of unusal or difficult technological problems in manufacturing the infant formula; and

(iii) A deviation from the labeling requirements of Subpart B of this part is necessary because label information, including pictograms and symbols required by those regulations, could lead to inappropriate use of the product.

(e) *Notification requirements.* (1) Information required by paragraphs (b) and (c) of this section shall be submitted to Chief, Regulatory Affairs Staff (HFF–204), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

(2) The manufacturer shall promptly notify FDA when the manufacturer has knowledge (as defined in section 412(c)(2) of the act) that reasonably supports the conclusion that an exempt infant formula that has been processed by the manufacturer and that has left an establishment subject to the control of the manufacturer may not provide the nutrients required by paragraph (b) or (c) of this section, or when there is an exempt infant formula that may be otherwise adulterated or misbranded and if so adulterated or misbranded presents a risk of human health. This notification shall be made, by telephone, to the Director of the appropriate FDA district office specified in § 5.115. After normal business hours (8 a.m. to 4:30 p.m.), the FDA emergency number, 202–737–0448, shall be used. The manufacturer shall send a followup written confirmation to the Division of Regulatory Guidance (HFF–310), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, and to the appropriate FDA district office specified in § 5.115.

(Collection of information requirements were approved by the Office of Management and Budget and assigned OMB control number 0910–0158.)

Dated: October 23, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85-27736 Filed 11-21-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Polyoxyethylene (23) Lauryl Ether Blocks

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by V.M.S., Inc., providing for safe and effective use of medicated blocks containing 2.2 percent polyoxyethylene (23) lauryl ether (surface-active compound) for reduction of the incidence of bloat in cattle grazing legume-rich (alfalfa, clover) pastures. The regulations are further amended to add the firm to the list of sponsors of approved NADA's.

EFFECTIVE DATE: November 22, 1985.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: V.M.S., Inc., P.O. box 406, Montgomery, AL 36195–6001, filed NADA 136–214 providing for free-choice administration of molasses-based, feed supplement blocks (25 pounds each) containing 2.2 percent polyoxyethylene (23) lauryl ether (surface-active compound) for reduction of the incidence of bloat in beef cattle and nonlactating dairy cattle grazing legume-rich pastures. The NADA is approved and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary. The regulations are also amended to add the firm to the list of sponsors of approved NADA's in 21 CFR 510.600(c).

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

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence

supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs, oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Part 510 is amended in § 510.600 by adding a new sponsor alphabetically in paragraph (c)(1) and numerically in paragraph (c)(2), to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
V.M.S., Inc., P.O. Box 406, Montgomery, AL 36195-6001	035624
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
035624	V.M.S. Inc., P.O. Box 406, Montgomery, AL 36195-6001
* * * * *	

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

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

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

4. Part 520 is amended by adding new § 520.1846 to read as follows:

§ 520.1846 Polyoxyethylene (23) lauryl ether blocks.

(a) *Specifications.* Each molasses-based block contains 2.2 percent polyoxyethylene (23) lauryl ether.

(b) *Sponsor.* See No. 035624 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 2 grams of polyoxyethylene (23) lauryl ether per 100 kilograms of body weight per day (1 pound of block per 500 kilogram (1,100 pound) animal per day).

(2) *Indications for use.* For reduction of the incidence of bloat (alfalfa and clover) in pastured cattle.

(3) *Limitations.* Administer free-choice to beef cattle and nonlactating dairy cattle only. Initially, provide one block per five head of cattle. Start treatment 10 to 14 days before exposure to bloat-producing pastures. Do not allow cattle access to other sources of salt while being fed this product. Do not feed this product to animals without adequate forage/roughage consumption.

Dated: November 18, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-27871 Filed 11-21-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Walnut Grove Products, Division of W.R. Grace & Co., providing for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin and sulfamethazine. The premixes are subsequently used to make finished swine feeds.

EFFECTIVE DATE: November 22, 1985.

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

SUPPLEMENTARY INFORMATION: Walnut Grove Products, Division of W.R. Grace & Co., 201 Linn St., Atlantic, IA 50022, is sponsor of NADA 139-301 submitted on its behalf by Elanco Products Co. The NADA provides for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for use to make finished swine feeds. The resulting feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, preventing swine dysentery (vibrionic), and controlling swine pneumonias caused by bacterial pathogens *(Pasteurella multocida* and/or *Corynebacterium pyogenes).* The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

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

List of Subjects in 21 CFR Part 558

Animal drugs; Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

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

§ 558.630 [Amended]

2. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(19) by inserting numerically the number "034139".

Dated: November 13, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-27872 Filed 11-21-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 27

[Docket No. R-85-1262; FR-2154]

Nonjudicial Foreclosure of Multifamily Mortgages

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of announcement of effective date for final rule.

SUMMARY: This notice announces the effective date for the final rule published in the **Federal Register** on October 10, 1985 (50 FR 41344), that revised HUD's regulations on nonjudicial foreclosure of multifamily mortgages. The rule required that the foreclosure commissioner commence foreclosure within 45 days after he or she had accepted designation as commissioner.

The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register.**

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the final rule published October 10, 1985 (50 FR 41344), is November 13, 1985.

FOR FURTHER INFORMATION CONTACT: John P. Kennedy, Associate General Counsel for Program Enforcement, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. (202) 755-6568. (This is not a toll-free number.)

Dated: November 15, 1985.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 85-27932 Filed 11-21-85; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF EDUCATION

34 CFR Part 778

Strengthening Research Library Resources Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Strengthening Research Library Resources Program. These regulations are being amended to reduce the paperwork burden for applicants, with a subsequent reduction in cost to the Department of Education.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Louise V. Sutherland, U.S. Department of Education, 400 Maryland Avenue SW., Room 725-G, Brown Building, Washington, D.C. 20202-1630. Telephone: (202) 254-5090.

SUPPLEMENTARY INFORMATION: Since fiscal year 1978, the Strengthening Research Library Resources Program, established by Title II, Part C of the Higher Education Act, 20 U.S.C. 1021, has provided financial assistance to institutions with major research libraries. The awards promote research and education of high quality and encourage sharing of library resources.

The current program regulations in 34 CFR Part 778 establish an application review procedure whereby two separate sets of criteria are used in evaluating applications, necessitating the convening of two evaluation panels. The first panel rates each application to determine the applicant's significance as a major research library, using the criteria contained in § 778.31. An applicant scoring at least 65 points is eligible for review by the second panel, which then reviews the application in terms of the quality of the proposed project, using the criteria in § 778.32.

There are about 150 major research libraries. Many of the same institutions apply each year. This amendment would permit an institution, having once established eligibility as a major research library under § 778.31, to retain that eligibility for four succeeding fiscal years, during which period only the information required in § 778.32 would be required for competition. This would have the effect of significantly reducing the paperwork burden and work hours on the part of the applicant. It would have the further effect of reducing the work hours of the first review panel, a cost-saving measure for the Department of Education.

Comments on NPRM

A notice of proposed rulemaking was published in the **Federal Register** on August 14, 1985 (50 FR 32746). No changes have been made. All comments that were received supported the amendment to the regulations and commended the Department for making this revision.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 778

Colleges and universities, Education, Grant programs—education, Libraries, Museums, Research.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

Dated: November 19, 1985.

(Catalog of Federal Domestic Assistance Number 84.091, Strengthening Research Library Resources Program)

William J. Bennett,

Secretary of Education.

The Secretary amends Part 778 of Title 34 of the Code of Federal Regulations as follows:

PART 778—STRENGTHENING RESEARCH LIBRARY RESOURCES PROGRAM

1. The authority citation for Part 778 continues to read as follows:

Authority: Part C of Title II of the Higher Education Act of 1965, as amended by the Education Amendments of 1980, Pub. L. 96-374, 94 Stat. 1383 (20 U.S.C. 1021, *et seq.*), unless otherwise noted.

2. Section 778.2 is amended by adding a new paragraph (d) to read as follows:

§ 778.2 Who is eligible to receive a grant under the Strengthening Research Library Resources Program?

* * * * *

(d) In establishing eligibility pursuant to § 778.31, an applicant may use a previously awarded score if that score was awarded for any of the four fiscal years immediately preceding the fiscal year in which the applicant is applying.

(Sec. 231 of the Act, 20 U.S.C. 1041)

[FR Doc. 85-27926 Filed 11-21-85; 8:45 am]

BILLING CODE 4000-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 85-107; FCC 85-585]

International Competitive Carrier Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action reduces tariff and facility licensing requirements for international communications common carriers whose rates and practices are effectively regulated by competition.

This action will bring Commission policies into line with recent changes in the international communications market such as growth in the variety of services offered and the number of service providers.

This action will improve carrier response to customer needs, eliminate unnecessary submissions of cost data and reduce work hours spent by staff on carrier filings.

EFFECTIVE DATE: December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Len Kennedy, Federal Communications Commission, Common Carrier Bureau, (202) 632-4047.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 63

Reporting and recordkeeping requirements.

Report and Order

In the matter of International Competitive Carrier Policies (CC Docket No. 85-107).

Adopted: October 31, 1985.

Released: November 15, 1985.

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I. Introduction and Background

1. On April 19, 1985 we released a Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding to solicit comments on the advisability of streamlining the tariff and facility regulation of certain international telecommunications carriers. Comments in response to the NPRM were filed on May 24, 1985.[1] Reply comments were filed on June 17, 1985.[2]

A. Domestic History

2. The streamlined regulations we adopt today are modeled after those adopted in the domestic *Competitive Carrier* rulemaking proceeding.[3] We initiated the domestic *Competitive Carrier* proceeding in 1979 in light of the increasingly competitive domestic telecommunications market.[4] The

[1] Comments were filed by Aeronautical Radio, Inc. (ARINC), American Broadcasting Companies, Inc., CBS, Inc., and National Broadcasting Company, Inc. (combined comments), American Satellite Company, Argo Communications Corporation (Argo), Association of Data Processing Service Organizations, Inc. (ADAPSO), Comsat International Communications, Inc. (Comsat), Equatorial Communications Services (Equatorial), Fedex International Transmission Corp. (Fedex), GTE Communications Services (GTE), Hawaiian Telephone Company (Hawaiian Telephone), International Communications Association (ICA), International Relay, Inc. (IRI), ITT Communications Services, Inc. (ITT) MCI International, Inc. (MCII), Overseas Telecommunications, Inc., (Overseas), The Puerto Rico Telephone Company, RCA Global Communications, Inc. (RCA), Satellite Transmission and Reception Specialists (STARS), Satellite Business Systems (SBS), SIN, Inc., Southern Satellite Systems, Inc. (Southern Satellite), TDX Systems, Inc. (TDX), TRT Telecommunications Corporation (TRT), U.S. Telecom, Inc. (U.S. Telecom), and The Western Union Telegraph Company (Western Union). TRT's comments were filed late but were accompanied by a motion to accept. We shall grant this motion.

[2] By order adopted June 14, 1985, the date for filing reply comments was extended from June 14 to June 17. Mimeo No. 5214. Reply comments were filed by ABC, CBS, and NBC (Combined Reply), ARINC, AT&T, COMSAT, Equatorial, Fedex, GTE, ICA, Hawaiian Telephone, IRI, ITT, MCII, Overseas, Puerto Rican Telephone, RCA, SBS, SIN, STARS, State of Hawaii, TDX, TRT, and Western Union. IRI's reply comments were filed late but were accompanied by a motion to accept. We shall grant this motion. Hawaiian Telephone filed several additional pleadings. Although unauthorized, we shall accept these filings in the docket.

[3] Policy and Rules Concerning Rates and Facilities Authorizations for Competitive Carrier Services (CC Docket No. 79-252), Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Report and Order, 91 FCC 2d 59 (1982), *recon.* FCC 83-69, released March 21, 1983; Second Further Notice of Proposed Rulemaking, FCC 82-187, released April 21, 1982; Third Further Notice of Proposed Rulemaking, Mimeo No. 33547, released June 14, 1983, 48 Fed. Reg. 28,292 (June 21, 1983); Third Report and Order, Mimeo No. 012, released October 6, 1983, 48 Fed. Reg. 46, 791 October 15, 1983); Fourth Report and Order, 95 FCC 2d 554 (1983); Fourth Further Notice of Proposed Rulemaking, FCC 84-82, released March 22, 1984, 49 Fed. Reg. 11,856 (March 28, 1984); Fifth Report and Order, 98 FCC 2d 1191 (1984); Sixth Report and Order, 99 FCC 2d 1020 (1985), *rev'd* MCT v. FCC, 765 F. 2d 1186 (D.C. Cir. 1985).

[4] A number of Commission decisions prior to the *Competitive Carrier Rulemaking* allowed increased entry into the domestic market. *See*, MCI, 18 FCC 2d 953 (1969), *recon. denied*, 21 FCC 2d 190 (1970); Specialized Common Carrier Services, 29 FCC 2d 870 (1971), *recon.*, 31 FCC 2d 1106 (1971), *aff'd sub*

Continued

foundation of *Competitive Carrier* was our finding that, in a competitive environment, market forces could provide the public the statutorily mandated protection against unreasonably high rates and undue discrimination. That is, marketplace forces could replace regulation and make unnecessary burdensome regulatory requirements for both non-dominant carriers and the Commission.

3. Unnecessary Title II regulatory burdens in the domestic market imposed by the facilities authorization and tariff review process were eliminated for non-dominant carriers in a series of *Competitive Carrier* orders issued over the last five years. In the *First Report and Order* we analyzed carriers' market power and classified those carriers with market power and the ability to exercise that power as dominant while carriers without market power were classified as non-dominant. The carriers found to be dominant, which included AT&T and the independent telephone companies, remained subject to the full panoply of regulatory requirements. Due to certain transitional factors such as facility shortages relative to demand, we also found Western Union, domestic satellite carriers, resellers and miscellaneous common carriers to be dominant. We found, however, that other domestic carriers did not have market power or the ability to set price and, therefore, we streamlined the regulation of these carriers.

4. In the *Second Report and Order* we settled on a forbearance approach for the further reduction of Title II regulation for non-dominant carriers. We determined that the burdens outweighed the benefits in requiring tariff filings and facilities applications with respect to terrestrial resellers. The *Third Report and Order* extended the scope of the *Competitive Carrier Rulemaking* to include services provided to all domestic points outside the continental United States including Hawaii, Guam and Puerto Rico.

5. The *Fourth Report and Order* developed a clear analytical framework, stressing an antitrust analysis, for applying the competitive carrier policies. Further, in the *Fourth Report and Order* we extended forebearance to all domestic resellers and specialized common carriers. In addition we extended streamlined regulation to all domestic satellite carriers, miscellaneous common carriers and facilities-owning interexchange carriers affiliated with exchange telephone companies. Finally, the *Fifth Report and Order* extended forbearance to domestic satellite carriers providing interstate service, miscellaneous common carriers, carriers providing DEMS systems and affiliates of exchange carriers providing interstate, interexchange services.[5]

B. The Notice of Proposed Rulemaking

6. In the NPRM we tentatively concluded that there is now sufficient competition in the provision of international telecommunications services to apply the Commission's *Competitive Carrier* policies to some of those services. We tentatively concluded that international telecommunications services are made up of two product markets, international message telephone service (IMTS) and non-IMTS.[6] This was based upon our finding of substantial demand and supply substitutability among the various non-IMTS services and little demand and supply substitutability between IMTS and any of the non-IMTS services.[7]

7. We tentatively found that, based upon factors such as language and time zone differences, customers were more likely to view IMTS as not substitutable with other international services. This belief was further strengthened by the usage patterns of the various services. While IMTS is a broad-based telecommunications service used by a wide variety of business and non-business users, the various non-IMTS services are primarily used for business purposes. Finally, our analysis of cross-elasticity appeared to show that users did not perceive IMTS to be a good substitute for many of the other international services.[8]

8. Our analysis in the *NPRM* also considered the geographic market or markets in which services are offered. We defined the geographic market in terms of a supplier's ability to provide IMTS or non-IMTS service to a given area or upon a subscriber's ability to receive IMTS or non-IMTS service from a given area via a particular service provider. In the *NPRM* we tentatively found that, primarily due to the need for a carrier to obtain operating agreements, it is proper to define the geographic market on a country-by country basis. We also tentatively found that a country-by-country approach is best because the relatively small number of facilities that are used to provide international services sometimes makes it difficult for a carrier to shift facilities serving one country to another based solely upon market conditions.

9. The focus of our analysis for reduced regulation was the existence of market power. We proposed that carriers without market power be classified as non-dominant, while those possessing market power be classified as dominant. We tentatively concluded that no carrier in the non-IMTS market and only AT&T and those primary carriers serving non-contiguous domestic points (*i.e.*, Hawaiian Telephone for Hawaii, RCA Globecom for Guam and AAC&R for Puerto Rico) in the IMTS market have the power to control prices or exclude competition.[9] We found this to be true for every country served by these carriers. The factors to be considered in any determination of market power include market share, control of bottleneck facilities, rate of return and actual or potential competition.

10. In the IMTS market we based our tentative finding of AT&T's dominance on its overwhelming market share as well as its position as the major owner of submarine cables. Additionally, we tentatively concluded that certain carriers which provide service between

nom. Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir. 1975), *cert. denied*, 423 U.S. 836 (1975); MCI Telecommunications Corp., 60 FCC 2d 25 (1976), *rev'd* MCI Telecommunications Corp. v. FCC, 561 F.2d 365 (1977) (Execunet); Domestic Satellite Facilities, 35 FCC 2d 844 (1972), *recon.*, 38 FCC 2d 665 (1972); Resale and Shared Use, 60 FCC 2d 261 (1976), *recon.*, 62 FCC 2d 588 (1977), *aff'd sub nom.*, AT&T v. FCC, 572 F.2d 17 (2d Cir. 1978), *cert. denied*, 99 S. Ct. 213 (1978); Customer Interconnection, 61 FCC 2d 766 (1976).

[5] In the *Sixth Report and Order*, which was overturned by the D.C. Circuit Court of Appeals, we required non-dominant carriers to detariff their service offerings.

[6] Examples of non-IMTS services are telex, telegram, TWX, private line, high and low speed data, videoconferencing and International Business Service (IBS).

[7] Demand substitutability refers to a customer's ability and desire to switch among various services based upon the relative prices and interchangeability of use of the services. Factors influencing demand substitutability may include service quality, availability, geographic coverage and marketing of the services in addition to relative price.

Supply substitutability refers to the ability of a supplier to shift resources from the production or supply of one good or service to another in response to changes in market conditions. We tentatively concluded in the NPRM that carriers may more easily shift their facilities among various non-IMTS services than between non-IMTS and IMTS. We indicated our belief that the major factor influencing supply substitutability is the need for a carrier to obtain an operating agreement prior to offering a specific service to a specific country. We found that it is especially difficult for a carrier to obtain an operating agreement for the provision of IMTS. Further, we found that any limited supply substitutability that currently exists from non-IMTS to IMTS is substantially less than from IMTS to non-IMTS.

[8] *See* paragraph 25, *infra*.

[9] We also tentatively concluded that any foreign owned carriers operating from the United States would be dominant for the provision of all services due to concerns we have about their ability, in concert with their parent organization, to distort the market. See n. 74, *infra*.

domestic, non-contiguous points and foreign points on a monopoly or near monopoly basis would also be dominant. We tentatively found that all other providers of IMTS are properly classified as non-dominant.

11. Our tentative conclusion that no carrier is dominant to any country for non-IMTS services was predicated upon our belief that any carrier attempting to price uncompetitively would be met by a variety of forces operating to make such action difficult, if not impossible. In particular, we noted that there are multiple firms operating to almost all countries and no firm has a large share of the total non-IMTS market to any country.

12. In the *NPRM* we tentatively concluded that Comsat should be treated differently for its different service offerings. Thus, we proposed treating Comsat as dominant for its provision of space segment and multi-purpose earth station services and non-dominant in the provision of IBS and television earth station services as well as any end-to-end services it may provide. We found Comsat to be dominant for space segment and multi-purpose earth station services because it is currently the monopoly provider of these services. On the other hand, we tentatively concluded that Comsat's IBS and television earth station and end-to-end services are offered in a competitive atmosphere with Comsat unable to control price. For these services we found Comsat to be non-dominant.

13. The implementation of *Competitive Carrier* policies would impact both the tariff and facilities licensing requirements carriers must follow. We tentatively proposed to subject the tariffs of non-dominant carriers to the rules that currently apply to streamlined, non-dominant domestic carriers. Under streamlining tariffs would be presumptively lawful and effective on fourteen days notice. Additionally, non-dominant carriers would not be required to file § 61.38 economic and cost support data when filing tariffs.

14. We also proposed less restrictive facilities licensing regulations. Specifically, we proposed requiring non-dominant carriers to file an initial application under § 63.01 in order to acquire facilities to provide a particular product (service) to a given country. Once an initial certification is given, a carrier would not need Commission approval to add circuits or modify the use of those circuits to provide additional services within that product market.[10] Rather non-dominant carriers would only have to report circuit additions on a semi-annual basis.

C. Summary of Comments

15. Almost without exception, parties filing comments expressed support for the commencement of this proceeding as well as the approach and analysis used in the NPRM.[11] We received very few comments addressing our product and geographic definitions in anything more than general terms. In the most extensive comments on this part of the *NPRM* TRT argued that our product market analysis was "seriously flawed." Central to TRT's argument is its belief that the use of IMTS for data transmissions (Dataphone service) makes IMTS substitutable with non-IMTS services such as telex. Further, TRT argues that private line service is used more for voice than non-voice service and is properly placed in the IMTS market. Other parties commenting on our product market analysis argued in favor of respectively, three product markets (U.S. Telecom),[12] one product market (ITT), and a service-by-service market approach (GTE). In the only comments on our geographic market analysis, U.S. Telecom stated that a regional or sub-regional approach would more accurately reflect business and marketing practices.

16. Most of the parties focused their attention on our market power analysis. In the IMTS market, AT&T argued that it should be classified as non-dominant due to actual and potential competition that it faces in all countries. It was the only party to support a finding of non-dominance for AT&T's IMTS service. Other parties supporting our finding of dominance for AT&T for IMTS, pointed out AT&T's world-wide service coverage, ownership/control of facilities and overwhelming market position in all countries.

17. Comments and reply comments filed by Hawaiian Telephone, the State of Hawaii, RCA, ITT and the Puerto Rican Telephone Company discussed at length our finding of dominance for certain noncontiguous domestic IMTS carriers. Only Hawaiian Telephone was strongly opposed to such a finding. RCA stated that it was not adverse to being classified as dominant for IMTS service to and from Guam as long as there was a procedure for being classified as non-dominant at some future time. ITT stated that if we were to classify All America Cables and Radio, Inc. (AAC&R) as dominant for the provision of IMTS service for Puerto Rico then we should also classify the Puerto Rican Telephone Company as dominant if it is allowed to offer IMTS service.

18. On the non-IMTS side, most parties focused on our finding of non-dominance for Comsat and AT&T. Among the arguments raised by parties opposed to our finding of non-dominance for these carriers for non-IMTS services was their established operating relationships, their control of facilities (INTELSAT space segment for Comsat; submarine cables, entrance facilities and tail circuits for AT&T), and the possibility of both AT&T and Comsat engaging in the cross-subsidization of their non-dominant activities from their dominant activities. A number of parties also mentioned AT&T's great financial resources as a source of dominance. ABC, NBC and CBS in combined comments, as well as SIN, took issue with our finding of non-dominance for Comsat's provision of television service while it is the only provider of that service.

19. TDX took issue with our tentative finding that all foreign-owned carriers are dominant due to their ability, in concert with their parent organization, to distort the market. TDX argued that our finding discriminated against foreign owned carriers. It argued that we should use the analysis developed in the NPRM to determine, on a country-by-country basis whether it or any other foreign-owned carrier had market power.

20. There was general support for our proposed streamlined tariff and facility licensing requirements although a number of smaller carriers including Southern Satellite, Argo, STARS, Overseas, Fedex and Equatorial argued that we should move to forbearance now or in the near future. ADAPSO and ICA argued that the notice period for discontinuation of service should be longer than the fourteen days implied in the NPRM. It was pointed out that arranging private line service requires coordination of a PTT, a U.S. international carrier and a U.S. domestic carrier and can take three months or longer. Finally, TRT argued that we

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[10] We did propose to require Commission approval to construct, acquire or operate lines in all major facility projects (*i.e.*, transoceanic submarine cables) or to acquire capacity from any private cable or satellite sources. See *also*, Tel-Optik, Ltd., FCC 85-89, released April 5, 1985 which requires any common carrier wishing to acquire capacity in a private submarine cable to file a section 214 application.

[11] ARINC did argue that the International Competitive Carrier proceeding should be delayed until carriers are granted direct access to INTELSAT, until carriers are allowed to purchase whole circuits in submarine cables and until Authorized User, 100 FCC 2d 177 (1985), is implemented.

[12] The three products markets are IMTS, low speed data and high speed data.

should require Western Union to make an affirmative showing of compliance with the Record Carrier Competition Act of 1981.

II. Discussion

21. Over the last several years the market for international telecommunications services has experienced rapid growth and substantial transformation in terms of both new carriers and new services. Carriers recently entering the international market include most of the entities which filed comments in this proceeding: Argo, American Satellite Company, Comsat International Communications, Equatorial, Fedex, Overseas, STARS, Southern Satellite, TDX, U.S. Telecom, Western Union, IRI, SBS, MCII and GTE Sprint.[13] There are also a large number of resellers and enhanced service providers offering a variety of international services. Among the new service offerings are INTELSAT Business Service (IBS), 800 Service-Overseas and a number of recently introduced high speed data services.[14] We also expect that a number of recent Commission decisions will provide a greater range of service and facility options for customers and carriers. These decisions include *Authorized User*,[15] *Earth Station Ownership*,[16] *Separate Systems*[17] and *Tel-Optik*.[18]

22. In light of these changes, and based on the record in this proceeding, we shall lessen the burdens of regulation for those carriers providing international services and facilities which face effective marketplace competition and do not have market power.[19] Thus, in this Report and Order we generally adopt the tentative conclusions as they were set forth in the *NPRM*. However, further analysis in light of the pleadings filed leads us to alter some of our conclusions. Thus, while we conclude that the international telecommunications market is comprised of two basic product groupings, IMTS and non-IMTS, the record demonstrates that television service is a unique offering and should be treated as a separate product.[20] We further conclude that a country-by-country geographic market approach best reflects the reality of the international marketplace. Additionally, we affirm our tentative conclusion that only AT&T and certain non-contiguous service providers are dominant in the IMTS market for all countries. We also affirm our tentative conclusion that no carrier is dominant in the non-IMTS market. Due to AT&T's unique market position, we will require AT&T to file cost allocation and accounting plans prior to streamlining regulation for any of its non-dominant non-IMTS services. Further, we affirm our tentative conclusion that Comsat is dominant in the provision of space segment and multi-purpose earth station services and non-dominant in the provision of IBS and any end-to-end services it may offer. Although we tentatively concluded in the *NPRM* that Comsat was non-dominant in the provision of television services, we conclude here that Comsat is dominant in the provision of that separate product.

A. Legal Basis for Streamlined Regulation

23. The legal basis for streamlining Title II facility and tariff requirements for non-dominant carriers was set forth in great detail in the *First Report and Order*.[21] In administering the Communications Act, 47 U.S.C. 151 *et seq.*, the Commission's directive is to ensure the availability to United States users of "rapid, efficient, nation-wide, and world-wide wire and radio communication services with adequate facilities at reasonable charges."[22] In pursuing these goals the Commission has "broad discretion in choosing how to regulate."[23] Competition and marketplace forces are clearly factors to take into consideration when regulating in the public interest.[24] A further basis for reduced regulation is found in the Record Carrier Competition Act of 1981 (RCCA).[25] The RCCA directs the Commission to forbear from exercising its authority as the development of competition among record carriers for the provision of traditional record services reduces the degree of regulation necessary to protect the public.[26]

24. Our experience in the domestic *Competitive Carrier* proceeding gives us confidence that when a competitive environment exists the goals of the Communications Act are best satisfied by reducing, to the extent practical, entry, exit and general regulatory burdens for non-dominant carriers. Furthermore, less regulation benefits the consumer by allowing carriers to better respond to customer desires at the lowest price on a timely basis. Finally, it should be emphasized that we are in no way abandoning our duties as set forth in the Communications Act. We will retain our power to investigate non-dominant carriers based upon complaints or upon our own initiative to

[13] Western Union's review of § 43.51 filings shows that at least thirty operating agreements for non-IMTS services have been signed since January 1984 by new entrants such as GTE Telenet, SBS, Graphnet, IRI, CCI, Net-Express and Federal Express.

[14] We also note major changes in the provision of services in several overseas nations. For example, in the United Kingdom, British Telecom has been privatized and a competitive service provider (Mercury) has been established. In Japan, recent legislation indicates that competition may be permitted for both domestic and international services. Finally, in Canada the government has announced plans to privatize Teleglobe Canada.

[15] 100 FCC 2d 177 (1985) (Authorized User II). [Allows non-common carriers to lease INTELSAT capacity directly from Comsat and permits Comsat, through a separate subsidiary, to provide end-to-end sevices].

[16] Modification of Policy on Ownership and Operation of U.S. Earth Stations that Operate with the INTELSAT Global Communictions Satellite System, 100 FCC 2d 250 (1984). [Provides for the independent ownership of international earth stations].

[17] Establishment of Satellite Systems Providing International Communications, FCC 85-399, — FCC 2d —, released September 3, 1985. [Granting conditional authorizations for international communications satellite systems separate from the INTELSAT system.]

[18] Tel-Optik, Ltd., FCC 85-99, released April 5, 1985.

[19] We do not believe, as ARINC argues, that it is necessary to delay streamlining until carriers have direct access to INTELSAT, the ability to purchase whole circuits in submarine cables, or until *Authorized User* is actually in effect. We do not anticipate that the implementation of competitive carrier policies will increase the ability of overseas administration to whipsaw U.S. carriers. (Whipsawing is the manipulation of U.S. carriers by a monopolistic PTT, playing one carrier against another, in order to gain favorable terms and conditions). We continue to be very concerned about leverage that PTT's possess when bargaining with multiple U.S. carriers. However, the actions we are taking today will not hinder our ability to monitor the markets and take remedial action. In fact, our uniform settlements policy is designed specifically to minimize the possibility of whipsawing. *See*, Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes (Notice of Proposed Rulemaking), FCC 85-332, released July 3, 1985.

[20] We also treat space segment and multi-purpose earth station services as separate and distinct products.

[21] 85 FCC 2d at 12-20, 40-44.

[22] 47 U.S.C. 151.

[23] *AT&T* v. *FCC*, 572 F.2d 17, 26 *cert. denied* 439 U.S. 875 (1978).

[24] The court in *Wold Communications, Inc.* v. *FCC*, 735 F.2d 1465, 1475 (D.C. Cir. 1984), stated that "the public interest touchstone of the Communications Act, beyond question permits the FCC to allow the marketplace to substitute for direct Commission regulation in appropriate circumstances." *See also*, *FCC* v. *RCA Communications, Inc.*, 346 U.S. 86 (1953); *Hawaiian Telephone Co.* v. *FCC*, 589 F.2d 647 (D.C. Cir. 1978).

[25] 47 U.S.C. 222(b)(1).

[26] In overturning the *Sixth Report and Order* the Court of Appeals for the D.C. Circuit cited the RCCA as an example of a specific grant of authority that would allow the Commission to engage in forbearance. *MCT* v. *FCC*, *supra* note 3.

ensure that rates and practices are just and reasonable.

B. Product Market

25. A wide variety of international telecommunications services are currently available to U.S. users. These include IMTS, telex, TWX, low speed data, high speed data, private line, telegram, IBS, teleconferencing and television. The task of dividing them into rational market groupings is not an easy one. For products to be placed in the same market grouping one must find demand or supply substitutability. There is no mathematical formula which yields a precise determination of whether different services are part of the same product markets. We must look at usage and supply patterns as well as available empirical evidence. Our analysis of the available data as well as the pleadings that were filed lead us to affirm our tentative conclusion that IMTS and non-IMTS presently represent two distinct product markets.[27] Most of the pleadings filed expressed general support for this product market determination. We also conclude that television service is currently a unique offering that should be treated as a separate product market.

1. Demand Substitutability

26. Demand substitutability refers to a subscriber's ability and willingness to switch among and between various services. Factors impacting on demand substitutability include service quality, relative prices, availability, and geographic coverage as well as the marketing of the services. As we stated in the NPRM, "the key aspects of demand substitutability are the interchangeability of use and the relative prices of the services." Thus, two products, in the relevant price range, which have similiar characteristics are to be substitutes if a rise in the price of product A causes consumers to switch to product B. The smaller the price change and the larger the consumer switch, the closer substitutes the two products are for each other.[28]

27. IMTS is the major international telecommunication service in terms of revenues (over 70%) and circuit requirements (over 80%). In general, all of the non-IMTS offerings are used for transmitting data and other information of a business nature. Further, all of these services are generally used without regard to language and time zone differences between countries. Thus, if the price of a non-IMTS service increases, users can substantially meet their communications needs by switching to another non-IMTS service. Similarly, if the price of the price of a non-IMTS offering decreases, users would be expected to meet a greater portion of their communications needs by switching to that non-IMTS service. In general, data and other information requirements cannot be satisfied by switching from the non-IMTS service to IMTS because this would require verbal transmission of data, which, while not impossible may be slow, inaccurate and inconvenient.[29]

28. We are not persuaded that private line services are properly placed in the IMTS market and not in the non-IMTS market as TRT suggests. While private line circuits can be used to provide voice-only service, it appears that they are more heavily used for data purposes and more substitutable with the various non-IMTS services than they are with IMTS. Indeed, the data contained in the carriers' circuit status reports indicate that most international private line circuits are used for alternative voice/data (AVD) service. The same reports indicate that very few private line circuits are used for voice-only service. TRT offers no support for its assertion that private line offerings are closer substitutes for IMTS than for non-IMTS services.

29. We also affirm our finding that IMTS is not a good substitute for other international telecommunications services. While there is no disagreement among the parties that the non-IMTS services are almost all used exclusively for business purposes, IMTS is used by a much broader range of customers. Also, language and time zone differences are more important issues to a person using IMTS than one using a non-IMTS service. For example, language and time zone differences are not important to high speed data transmission because the computers can work without regard to time or language. Similarly, a telex message can be sent at any time and can be read and/or translated when convenient. It is much less useful however, to make a telephone call to a nation in which a foreign language is spoken since the caller and recipient must share a common language in order to communicate effectively. Also, in many instances the nation being called is six or more hours ahead or behind U.S. time so that business hours barely overlap, if they do at all. We further note that the preferred way of conducting international business, perhaps because of language, time zone and legal considerations, is by written/recorded transmissions rather than by oral (IMTS) transmissions. Thus, a reduction in the price of IMTS is unlikely to cause non-IMTS users to shift from non-IMTS service to IMTS.[30]

30. TRT makes the broad, unsupported assertion that the existence of Dataphone services means that IMTS is substitutable with telex and other non-IMTS services.[31] While no record of Dataphone use is available, if Dataphone were a good substitute for non-IMTS service the substitutability would be reflected in non-IMTS usage and growth data. Our review of the relative usage and rate fluctuations of IMTS and telex, as set forth in the NPRM, showed that demand for IMTS is not greatly influenced by telex rates and vice versa. Over the last few years IMTS rates have declined by 50% or more.[32] If Dataphone were a good substitute for telex one would expect a large number of telex users, for which rates remained stable, to switch to IMTS and Dataphone given the lower rates. This did not occur.[33] Thus, the services are

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[27] We include 800 Service—Overseas in the IMTS market. See, Inquiry into the Policies to be Followed in the Authorization of Common Carrier Facilities to Meet Pacific Telecommunications Needs During the Period 1981–1995 (Second Report and Order), FCC 85–457, released August 22, 1985; Inquiry into the Policies to be Followed in the Authorization of Common Carrier Facilities to Meet Atlantic Telecommunications Needs During the 1985–1995 Period (Second Report and Order), FCC 85–456, released August 22, 1985.

[28] Substitutability of demand is not, as TRT implies, an absolute proposition. It is not simply a case of products either being substitutes or not being substitutes. Rather, the issue usually is as to the degree of substitutability. Thus, products that are found not to be good substitutes may very well still have some degree of substitutability.

[29] Although IMTS and non-IMTS may be partially substitutable, particularly with the use of Dataphone type customer premises equipment, we do not find that this limited degree of substitutability negates our finding of two primary product markets. See para. 30, *infra*.

[30] See, Rea, John D. and Gerald M. Lage, "Estimates of Demand Elasticities for International Telecommunications Services," *The Journal of Industrial Economics* 363–381 (June 1978). This study indicates, for the 1964–1973 period studied, that IMTS prices are not related to the demand for telex service and that telegraph rates are inversely related to IMTS demand.

[31] GTE argues that the line between IMTS and non-IMTS may eventually be blurred. While this may be so, we are not yet at that point.

[32] For example, from 1980 to 1983 the price of peak period IMTS Direct Dial to the United Kingdom (by far the largest overseas international IMTS market) dropped from $4.80 for the first minute and $1.60 for additional minutes to $2.06 and $1.26 respectively.

[33] The amount of telex traffic continued to grow throughout the period although it did slow from a growth rate of 15.2% in 1980 to 6.3% in 1983. We view this declining growth rate to reflect the increased usage of other non-IMTS services rather than any substantial substitutability between IMTS and non-IMTS offerings.

not good enough substitutes to warrant placing IMTS and non-IMTS services in the same market grouping.

2. Supply Substitutability

31. Supply substitutability is defined as the ability of a service provider to shift its resources from the manufacture or provision of one product or service to another product or service in response to changes in market conditions or in the pursuit of profits that exceed the opportunity cost of capital.[34] The key to supply substitutability is the lack of substantial entry barriers which permits a supplier to shift its facilities and resources from the provision of one service to the provision of another service in the short-run.

32. Barriers to entry may be technological (e.g., a patent) economic (e.g., capital costs, economies of scale) or legal (e.g., governmental imposed restrictions) in nature. In the domestic market it is relatively easy for carriers to respond to customer demand in the short-run by redeploying existing facilities because there are no substantial technological, economic or legal barriers blocking the reallocation of carrier resources. A number of unique features of the international arena, however, make it difficult for carriers to reallocate resources among various services.

33. The most significant entry barrier in international telecommunications is the need to obtain an operating agreement before providing a particular service to a particular country. Thus, even though it may be relatively easy from a technological or economic standpoint for a carrier to shift its resources from the provision of one service to the provision of another, it is often quite difficult from a PTT "regulatory" standpoint.

34. In the *NPRM* we expressed our belief that carriers can more easily shift their facilities from the provision of one non-IMTS service to the provision of another non-IMTS service than they can shift non-IMTS facilities to provide IMTS service. This tentative conclusion was based on the limited availability of operating agreements in general, and the fact that the operating agreements of many carriers to provide one non-IMTS service frequently reflect the agreement to provide several non-IMTS services. Further, it appeared to be easier for carriers to gain new operating agreements for non-IMTS service than for IMTS service. The pleadings have not convinced us that these observations were incorrect. While we are not maintaining that it is easy for carriers to obtain non-IMTS operating agreements, the number and nature of existing agreements indicate that it is easier to obtain agreements for non-IMTS than for IMTS services. For example, MCII provides a variety of non-IMTS services (telex, telegram, data and private line offerings) to almost every country but provides IMTS directly to only a handful of countries. The same applies to GTE Sprint. Further, many carriers provide only non-IMTS services (Western Union, FTC, ITT, RCA, IRI) or have only made minor inroads into the IMTS market (SBS and TRT).

35. The existence of resellers and refilers [35] may be evidence of some limited supply substitutability from IMTS to non-IMTS services. However, it seems that the supply substitutability presently works in only one direction—from IMTS to non-IMTS. Given the size and profitability [36] of the IMTS market, non-IMTS carriers would have a strong incentive to shift some of their facilities to IMTS use if they were able to do so. The absence of any significant movement along these lines mitigates against finding IMTS and non-IMTS services to be supply substitutes.

36. Thus, our analysis of demand and supply substitutability leads us to find that, in contrast with the one product market found domestically, international telecommunications services are properly divided into two broad product markets—IMTS and non-IMTS. We also conclude that television service is not substitutable with other services and should be treated separately.[37]

C. Geographic Market

37. The dimensions of the geographic market are based upon a supplier's ability to provide service to a given area or upon a subscriber's ability to receive service in a given area.[38] We affirm our tentative conclusion as set forth in the NPRM that every country constitutes a separate geographic market. With the exception of U.S. Telecom, which argued in favor of a regional or sub-regional geographic definition, no party had serious objections to our tentative conclusion. Our finding is based primarily upon the need for a carrier to obtain an operating agreement prior to providing service to a given country. Thus, a carrier is not free to enter a country to take advantage of prevailing market conditions unless it has the agreement of that country to do so.[39]

38. A carrier may also encounter difficulties if it attempts to shift its facilities from serving one country to serving another based upon market conditions. This is due in part to the limited number of cable and satellite facilities used to provide international services. Additionally, prior to adding or reducing facilities in a country, a carrier must obtain the agreement of the foreign correspondent. These factors make the international market markedly different from the domestic market where carriers have much greater economic and operational flexibility.[40] Thus, in contrast with our finding that the domestic market constitutes a single geographic market, the international geographic market exists in terms of separate and distinct areas determined by national borders. In other words, each country is a distinct geographic market.

D. Market Power

39. A finding of market power for any firm for a given service in a given geographic market would lead us to conclude that the firm is dominant power and that the marketplace would not operate to ensure that the firm would price that service competitively

[34] 95 FCC 2d at 565. See, II Areeda and Turner, Antitrust Law 374 (1978).

[35] A refiler provides a service in which traffic is carried from one point (e.g., the U.S.) to another (e.g., the U.K.) and then placed (filed) into the second country's network for delivery within the second country or to additional overseas points. In a refiling situation the refiler may be a carrier or enhanced service provider for the first segment (U.S. to first overseas point) of the transmission and then is a customer of the overseas PTT for the second segment (first overseas point to second overseas point) of the transmission.

[36] AT&T's reported rate of return on IMTS for 1977 to 1979, the last years in which this data was collected was 15%, 23% and 36% respectively. Available aggregated data indicate that AT&T's rate of return for IMTS since 1979 has exceeded its overall authorized rate of return.

[37] Television service is a unique offering with limited demand or supply substitutes. Television cannot be readily substituted for telex, telegram, data, private line or voice services. Further, television service requires a substantial amount of bandwidth (transponder capacity) and is extremely expensive relative to most other services, both IMTS and non-IMTS. This pricing factor limits demand substitutability while the bandwidth factor limits supply substitutability. As indicated above, supply substitutability must exist in both directions. While television capacity could be divided into IMTS and non-IMTS offerings, it would be extremely difficult to combine capacity from a variety of services, employed by a variety of carriers, used by an extremely large number of users and used for service to several countries into a single television service.

[38] 95 FCC 2d 573.

[39] As transborder arrangements such as refiling and transiting increase, or as regional groupings which do not require individual country-by-country operating agreements develop, we may at some future date consider U.S. Telecom's geographic market proposal.

[40] Domestic carriers are able to provide interstate service throughout the United States. Also, the cost of building facilities is lower and the design flexibility greater domestically than it is internationally.

or employ practices consistent with the requirements of the Communications Act. Thus, any firm found to possess market power for a given product and geographic market should be subject to full Title II regulation for the provision of that service. We are aware that differences exist between the domestic and international markets, such as the presence of PTTs with market power in all international markets. Upon further consideration based on further analysis or experience gained from the policy that we are adopting here, we may in the future scale back or reduce the level of Title II regulation on international dominant carriers in view of the different circumstances prevailing in the international market.

40. Traditional antitrust analysis defines dominance as "the power to control prices or exclude competition." [41] There are a number of questions that must be asked to determine whether a firm has market power in a given product and geographic market. A firm is not dominant if it is unable to lower price or employ other practices to drive firms out of the market. However, even if a firm has the ability to lower price to eliminate competition, it is still not necessarily dominant. If, when the firm attempts to raise price in order to reap monopoly profits it encounters entry of new firms into the market, then the firm is non-dominant.[42]

41. A firm lacking market power does not have the ability to raise prices above the competitive level because other firms will not follow suit and as a result it would lose business or attract entry, forcing prices down to the competitive level. Thus, a non-dominant firm is effectively regulated by marketplace forces, making the imposition of extensive regulations unnecessary.

42. As we stated in the NPRM, a determination of a carrier's dominance or non-dominance cannot be made in scientifically precise terms. No factor by itself is determinative. Rather, it is necessary to determine if a firm has the ability to control prices. Factors that may be indicators of such power include market share, rate of return, control of facilities and actual or potential competition. While the ability of a multi-product firm to cross-subsidize its competitive activities with its dominant activities is a concern, we believe that sufficient safeguards can be fashioned to minimize a firm's ability to engage in cross-subsidization.

1. IMTS

43. We affirm our tentative conclusion that AT&T is dominant in its provision of IMTS. We also afirm our tentative conclusion that certain carriers providing IMTS between domestic, non-contiguous points and foreign points are dominant. All other carriers currently providing IMTS are non-dominant.

a. AT&T

44. While market share is not determinative of market power, it appears to be a clear indication of dominance for AT&T's provision of IMTS. AT&T is still the only provider of IMTS between the U.S. mainland and the majority of foreign countries. In those countries where there are other IMTS providers, AT&T still has an overwhelming market share.[43] We are not persuaded by AT&T's argument that the current and potential competition it faces is sufficient to justify a finding of non-dominance. Merely because more than one carrier provides service to a given geographic area does not automatically mean that all carriers providing service to that area are non-dominant. We have certainly not employed this analysis in the domestic arena. This is especially true when, as here, the secondary carriers in the market have very little market penetration. For example, the latest traffic figures for the United Kingdom, arguably the most competitive IMTS market, show that MCII, the second largest U.S.-U.K. IMTS service provider, has only about 5% of the originating (U.S. outbound) traffic. Perhaps even more telling is that it has a negligible percentage of the terminating (U.S. inbound) traffic.[44]

45. Additinally, while we are adopting a country-by-country approach, we must note that the question of how many different countries the new entrants serve is a factor in determing if AT&T (or any other carrier) faces effective competition. There is clearly some competitive marketing advantage to be gained if a carrier has the ability to serve all or most foreign points because a subscriber is more likely to take service from a carrier with the more comprehensive coverage.

46. The IMTS market then is not sufficiently competitive to ensure that AT&T is unable to manipulate rates in a way that discourages competition. Thus, until such time as competition in the provision of IMTS more fully develops so as to negate AT&T's ability to control prices or exclude competition, it is necessary to continue the full scale regulation of AT&T for its IMTS offerings to all countries. When considering the competitiveness of a particular geographic market we will look at a variety of factors including the number of entrants, market penetration for both inbound and outbound traffic, regional and global market positions, refiling and transiting arrangements, control of facilities and the potential for non-competitive pricing. In the future, as we implement this country-by-country streamlining approach, carriers which seek non-dominant treatment for one country which are dominant for service to another country should clearly present an accounting and cost allocation plan which segregates and identifies on a country-by-country basis all relevant costs and revenues.

b. Noncontiguous Domestic Carriers

47. We also find that it is currently necessary to continue full-scale regulation for certain carriers providing international service for non-contiguous domestic points. Specifically, we find that the following carriers are dominant in their provision of IMTS service: Hawaiian Telephone for Hawaii; Alascom for Alaska; All American Cable & Radio for Puerto Rico; ITT-CIVI for the U.S. Virgin Islands and RCA Globcom for Guam.[45] Of the carriers that filed comments only Hawaiian Telephone strenuously opposed this finding of dominance.[46]

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[41] 351 U.S. at 391; *Areeda & Turner* at 322; 85 FCC 2d 1, 20–22.

[42] If a firm is unable to raise price in the long-run without encountering new entry, then it would not be rational for it to follow a policy of cutting prices in the short run, and thereby sacrificing immediate profits, in order to eliminate current competition. Thus, if facilities, interconnection, operating agreements and regulatory approvals were easily and economically obtained, then a firm which had the ability to eliminate competition may still not be dominant. *See* 85 FCC 2d 1, 21 and 80–81; F.M. Scherer, Industrial Market Structure and Economic Performance (2nd Ed. 1980) pp. 232–252.

[43] We estimate, based on the number of circuits used to provide IMTS, that in three markets served by several IMTS suppliers, the U.K., Belgium and Australia, AT&T has IMTS market shares of approximately 91%, 95% and 93% respectively.

[44] We note that not all operating agreements obtained by AT&T's IMTS competitors provide (or initially provided) for the handling of U.S. inbound traffic. Because the handling of U.S. inbound traffic and the receipt of one half of the agreed upon accounting rate directly influences a route's profitability as well as the U.S. carrier's collection rate for outbound traffic, any analysis of market power which looks at market share must consider both outbound and inbound traffic shares.

[45] This order does not affect the provision of service between these noncontiguous domestic points and the continental United States. These services were accorded streamlined treatment in the domestic *Competitve Carrier* Third Report and Order, 48 Fed. Reg. 46,791.

[46] AAC&R argued that if it is dominant, then Puerto Rican Telephone should also be dominant

Continued

48. We find these carriers dominant because they do not currently face effective competition in their markets. Thus, but for Commission oversight, they would be able to act and price anti-competitively. Additionally, most of these carriers also control the local exchange facilities for the market in question. This constitutes a classic bottleneck and gives these carriers the ability to exclude meaningful competition through discriminatory practices. As other carriers begin to offer international telephone service to and from these markets we would expect to revisit the status of particular local exchange carriers as market developments warrant.

49. Hawaiian Telephone argues that it should be streamlined citing the fact that it has only a small share of the total U.S.-international IMTS market. It does not adequately address, however, the critical question of its dominance in the provision of IMTS to and from Hawaii. We would agree that Hawaiian Telephone would be non-dominant if it wished to provide IMTS to or from the continental U.S. or any other domestic market. However, Hawaiian Telephone has the ability to exert market power in the Hawaiian market. The other carriers it cites as providing Hawaii-international service have only recently initiated service, have little market penetration, employ relatively few circuits and do not, at the present time, offer effective competition to prevent abuses.[47]

c. Other IMTS Carriers

50. In the NPRM we tentatively concluded that all other IMTS carriers (e.g., MCI, GTE Sprint, SBS) are non-dominant. No party had any objection to this finding. None of these carriers serve all markets and the market shares they have to countries which they do serve is minimal. While they may create downward pressure on IMTS rates, there is no way in which they can dominate the market. Thus, we adopt our tentative conclusion and find that all carriers presently providing IMTS except AT&T and the noncontiguous domestic carriers identified above are non-dominant in the provision of IMTS.[48]

2. Non-IMTS

51. We affirm our tentative conclusion that no carrier is dominant in the provision of non-IMTS services for any geographic market. Any non-IMTS service provider attempting to price uncompetitively will be met by market forces making such action difficult if not impossible to sustain. With the exception of our proposed treatment of AT&T and Comsat almost all of the parties supported the streamlined regulation of non-IMTS service providers.

52. In almost every country, and certainly in all major geographic markets, there are a number of firms providing a wide variety of non-IMTS services on both a real time and store-and-forward basis. This includes entities providing telex, TWX, private line, telegram, IBS, low and high speed data, teleconferencing and enhanced service offerings. Thus, any carrier attempting to raise prices for non-IMTS services would find that it would lose business to other carriers offering identical or substitutable services at relatively lower prices. Any carrier lowering prices in an attempt to drive competitors out of the market would find that it was unable to maintain the low prices for a long enough period to drive all competitors out of the market or that competitors would re-enter the market when it attempted to charge monopoly rates.

53. We reject GTE's argument that we must make a finding for each of the major IRCs on a service-by-service basis. Our finding that non-IMTS services, with the exception of television service, are substitutable makes such an analysis unnecessary. The issue is not whether entry into the telex market or other specific non-IMTS markets is limited, but rather whether entry and competition in the non-IMTS market as a whole are limited. Clearly this is not the case. We particularly note that the rapid growth in new and innovative non-IMTS services such as IBS and the general greater acceptance which appears to be developing among foreign administrations to operate with additional (new) carriers provide sufficient market discipline on the IRCs and other non-IMTS service providers to justify streamlined regulation of their service offerings.

54. AT&T's activities in the non-IMTS market differ significantly from its activities in the IMTS market. Thus, in contrast with the IMTS market where we found AT&T dominant, here we find that AT&T is subject to sufficient market regulation and that it should be classified as non-dominant. However, as further described in paragraph 61, before actually streamlining the regulation of AT&T's non-IMTS activities we will require AT&T to file a cost allocation and accounting plan.

55. AT&T has less than 10% of the total non-IMTS market and is not a major non-IMTS provider to any country. Even to the United Kingdom, the country to which AT&T delivers the largest percentage of its non-IMTS traffic, it has only approximately 11% of the total non-IMTS market.[49] Our finding of non-dominance for AT&T's non-IMTS services, however, does not rest solely upon its small market share. Sharp distinctions can be made between the structure of the non-IMTS and IMTS markets. In the IMTS market, AT&T is the only established carrier and its competitors are recent entrants with extremely small market shares. In the non-IMTS market, however, AT&T is competing with a number of established carriers who have been providing a variety of services for decades. In fact, AT&T is a relatively recent entrant into the non-IMTS market.[50] Additionally, the non-IMTS market is, as TRT stated, miniscule by AT&T's standards. Also, by far the largest portion of its international revenues are derived from IMTS. Thus, it does not appear that it would be rational for AT&T, especially in the face of growing IMTS competition and vigorous non-IMTS competition, to sacrifice IMTS revenues or returns in a highly speculative bid to gain control of the non-IMTS market. Further, we do not believe that any of the arguments raised by commenters relating to established operating relationships, control of facilities and disparity of resources are sufficient to justify finding AT&T dominant for non-IMTS services.

56. *Established operating relationships.* While it is true, as a number of parties stated, that AT&T has established relationships with every PTT, it is also true that there are a number of non-IMTS service providers that have established similar relationships with most administrations. Further, the movement globally is toward countries opening their markets to increased competition rather than closing them. It also would not seem to be in a PTT's best long-run interests to deal with only AT&T to the exclusion of all other service providers since AT&T

when and if that entity is authorized to provide international service. We will address this issue when and if we authorize Puerto Rican Telephone to provide international service.

[47] We note that one carrier providing IMTS service from Hawaii, GTE Sprint, has the same parent corporation as Hawaiian Telephone.

[48] We specifically deal with U.S. carriers which are owned or controlled by foreign entities in paragraphs 72 and 73.

[49] This is based upon the total number of non-IMTS circuits providing service to the U.K.

[50] While AT&T has always been allowed to offer voice-only private lines, it was not until the decision in *Overseas Communications*, 92 FCC 2d 641 (1982), that AT&T was allowed to offer traditional record data, alternate voice/data (AVD) and other non-IMTS services.

does not provide all services.[51] Thus, we do not believe that AT&T's correspondent relationships give it such a significant advantage in the non-IMTS market that would lead to AT&T's being able to control the prices of non-IMTS offerings.

57. *Control of facilities.* AT&T's use and ownership of facilities do not give it dominance in the non-IMTS market. AT&T cannot exercise the degree of unregulated control of facilities that would allow it to exclude competition and justify a finding of dominance. Submarine cables are a joint undertaking of U.S. carriers and their foreign correspondents. All carriers have ownership interests in these cables and can purchase further IRU interests in them. Additionally, carriers are able to use satellite facilities, which are available in large quantities world-wide, to provide service. We have also approved private submarine cables whose capacity will be available to carriers or non-carriers.[52] Finally, the Commission remains actively involved in the facilities planning and consultative process and we will still require a section 214 license prior to the construction of any submarine cable.

58. While AT&T does control most entrance facilities, they are in fact offered to all carriers on a tariffed basis.[53] The tariffs for these entrance facilities remain subject to full scale regulation. Further, we retain oversight to investigate any of AT&T's practices to determine their lawfulness. Thus we are in a position to prevent possible abuses based upon AT&T's control of these facilities.

59. A number of parties also argued that AT&T's vast domestic facilities network and dominance in the domestic market is reason to find it dominant in the non-IMTS international market. We do not agree. It is true that AT&T is dominant in the domestic telecommunications market.[54] However, as with the entrance facilities AT&T's domestic lines are subject to full-scale regulation. Further, a wide and growing variety of non-AT&T domestic facility options for carriers and users exist. In fact, a number of non-IMTS service providers have their own domestic networks.[55] Thus, we do not find that AT&T's domestic facilities network is cause to find it dominant in its provision of non-IMTS services.

60. *Disparity of resources and cross-subsidization.* A number of parties raised the issue of AT&T's greater resources as a source of its dominance in the non-IMTS market. It is not apparent, nor is it even intuitive, that AT&T's resources alone justify a finding of dominance. First, AT&T would have to make a corporate decision to devote its resources to the non-IMTS market. Given the relative size of that potential market and its relative unimportance to AT&T's total corporate operations, such a decision is not necessarily predictable. Second, if AT&T attempted to lower its prices below marginal cost to drive out competitors, it would face a difficult task in that it would be trying to drive out several established companies with substantial market shares. It is not likely that AT&T would expend its resources in such a mammer. Also, even if AT&T were able to drive other carriers out of the market, it would quickly encounter new entry when it attempted to raise prices to reap monopoly profits. Thus, it would serve no purpose for AT&T to lose money for some period of time with the expectation of making the losses up in the future.[56]

61. While we cannot conclude that the above issues warrant a conclusion that AT&T is dominant in the provision of non-IMTS services, we do recognize that AT&T holds a unique position in the provision of international services. We further recognize that the provision of dominant and non-dominant services within the same corporation raises potential difficulties.[57] Thus, while we find AT&T non-dominant for non-IMTS services, we will require it to file an accounting and cost allocation plan prior to our actually streamlining the regulation of its non-dominant activities. This parallels the requirement we recently set forth in our order allowing AT&T to eliminate the separate subsidiary for Customer Premises Equipment.[58] There we stated, "we recognize the utility of accounting to guard against cross-subsidization by carriers that are providing both regulated and unregulated services and products."[59] We do not believe that it is necessary to impose structural separation to prevent harm to other non-IMTS service providers because of the vigorous and established competition in the non-IMTS market.[60]

62. This accounting and cost allocation plan should be designed to segregate and identify separately the costs and revenues attributed to AT&T's IMTS as opposed to its non-IMTS. We are especially interested in the allocation of joint and common costs between IMTS and non-IMTS activities. AT&T should provide us with a list of all joint and common cost categories that are used to provide IMTS and non-IMTS and the allocation methodology to be employed to assign these costs. We are also concerned that AT&T allocate circuits in old, high cost cables and new, lower cost cables fairly. Similarly, we are concerned that excess cable capacity held by AT&T for only future use not be allocated entirely to IMTS but that there be a reasonable division of costs for these circuits between IMTS and non-IMTS.[61]

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[51] For example, AT&T does not provide telex which is the most significant non-IMTS service in terms of minutes and revenues.

[52] *See, Tel-Optik, supra* note 18. Carriers will have to obtain Section 214 authority in order to purchase capacity in these private systems.

[53] Entrance facilities are those facilities which connect cableheads or earth stations to a carrier's switching center. Some entrance facilities are jointly owned by the carriers.

[54] 85 FCC 3d 1.

[55] While AT&T is a major lessor of facilities used by other non-IMTS providers, we note that many of these providers have constructed their own networks or lease facilities from entities other than AT&T.

[56] While it might be possible for AT&T to raise prices to a level above the competitive level but below the monopoly level and earn excess profits without encouraging entry in the long-run, we do not believe AT&T would attempt such a strategy in an extremely competitive and dynamic market. In addition, we will continue to closely monitor the market and will take remedial action if abuses occur.

[57] This is in contrast to Comsat, where a separate subsidiary structure is in effect. *See infra*, paragraphs 63–66. *See also*, Communications Satellite Corps., Mimeo No. 7025, released September 13, 1985.

[58] Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone & Telegraph Company, FCC 85–509, released September 30, 1985 [CPE Decision].

[59] *Id.* at n. 105. *See also*, Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services [Second Computer Inquiry]; and Amendment of the Commission's Rules to Provide for Nonregulated Activities of Telephone Carriers [Fifth Report and Order], 49 FR 46378 (November 26, 1984).

[60] CPE Decision, *supra*. Paragraph 36. "Had competition in [the CPE] markets been more firmly established, the benefits we perceived in structural separation would certainly have been smaller. In examining the current state of competition in the CPE market, we conclude, contrary to the assertions of some parties, that competition is vigorous and strong. In light of this robustly competitive marketpalce, our previous concerns that AT&T would be able to displace competition and reestablish a dominant position in CPE have been greatly reduced."

[61] The Common Carrier Bureau will conduct an initial review of the plan, prior to implementing streamlined regulation for AT&T's non-dominant activities. If the Bureau determines that the plan meets the concerns expressed above. If the Bureau determines that the plan meets the concerns expressed above, it may allow streamlined regulation to take effect. Subsequently, a detailed review will be conducted with an opportunity for interested parties to comment. This is consistent with the procedures adopted in the CPE proceeding. *See CPE* Decision at n. 107.

3. Comsat

63. Due to Comsat's unique mix of service offerings it is useful to discuss Comsat separately from the other service providers in the international market. Basically, Comsat provides five distinct jurisdictional services: space segment services, multipurpose earth station services, television service, IBS and end-to-end services. Space segment services are provided through the Space Communications Division while the other four services are provided through the competitive subsidiary, Comsat Services Division, Inc.[62] We will discuss each of these offerings.

a. Space Segment

64. Comsat is currently the only provider of INTELSAT space segment capacity. We tentatively concluded in the NPRM that Comsat is dominant in the provision of the service. No party, including Comsat, objected to this finding.

65. We recognize that satellite capacity is generally fungible with submarine cable capacity for most uses and routes. Nonetheless, it is preferred for some service offerings and geographical routes[63] and due to factors such as restoration and diversity most carriers and administrations prefer to use a mix of cable and satellite facilities.[64] Therefore, for the purposes of this initial deregulatory effort, we will limit our analysis by making the conservative assumption that the space segment is a relevant sub-market. Thus, Comsat is dominant for the provision of this service.

b. Multi-purpose Earth Stations

66. In the *NPRM* we tentatively concluded that Comsat is dominant in its provision of multi-purpose earth station services. We affirm that finding here. Comsat is currently the fifty percent owner and operator of the seven multi-purpose earth stations currently operating in the continental U.S., Hawaii and Guam. These are the only earth stations of this type currently in service. It is from these earth stations that carriers generally connect with INTELSAT satellites to obtain international satellite service. While it is possible, since our *Earth Station Ownership* decision, for other entities to construct new multipurpose earth stations, this does not appear to be the direction that the market is taking.[65] Thus, we find that multi-purpose earth station services have no easily substitutable services, that this service is a distinct product market, and that Comsat is presently dominant in the provision of this service.

c. Television Service

67. In the *NPRM* we tentatively concluded that Comsat is non-dominant in the provision of television service. After reviewing the pleadings pertaining to this issue we now believe that Comsat is dominant in its provision of this service.[66] Comsat is presently the only provider of television service and has the market power to charge monopoly prices for this service. Thus, it is reasonable to classify Comsat as dominant for this service. We do recognize, however, that the market for the provision of television service appears to be on the verge of expansion. A number of carriers have been recently authorized to construct TV-only earth stations.[67] Further, as fiber optic submarine cables with the capacity to carry television signals are introduced, users desiring television service will have a wider variety of service options available.[68] Thus, we expect vigorous competition to develop in this market in the not too distant future. Still, until these plans for alternative sources of television service materalize, we must retain full regulatory oversight to prevent Comsat from exploiting its current position as the only provider of television service. For this reason, it is necessary to classify Comsat as dominant in the provision of this service.

d. IBS and End-to-End Services

68. We affirm our tentative conclusion that Comsat is non-dominant in its provision of IBS and end-to-end services. We find the arguments raised by those parties opposing this finding to be unconvincing. The mere fact that a service is in its developmental stages is not sufficient reason, by itself, to find that one carrier is dominant.[69] In any event, IBS is clearly substitutable with other non-IMTS private line data services so that there is no reason to treat any IBS service provider differently. Comsat has no special advantage over other carriers in the provision of this non-IMTS service that would justify a finding of dominance.[70] We also find no merit in a number of parties' arguments that the Comsat name and its PTT relations give it an unfair advantage over its competitors. Many of the other non-IMTS service providers are well-established in the marketplace and have well established PTT relations.

69. Most of those parties opposed to our finding Comsat non-dominant for its competitive service offerings expressed concern over Comsat's ability to engage in anticompetitive behavior due to the fact that it also engages in activities in which it possesses market power, especially its monopoly provision of space segment. We believe, however, that sufficient structural and administrative safeguards are currently in place to minimize any dangers that might surface from the streamlining of Comsat's competitive activities. These safeguards include the structural separation of Comsat's competitive and non-competitive jurisdictional activities as well as extensive financial reporting requirements.[71]

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[62] While not yet actually providing end-to-end services, Comsat was authorized to do so in *Authorized User II* and has stated its intention to enter this market. It appears that Comsat International Communications, Inc. will be the entity providing the bulk of the non-INTELSAT and non-INMARSAT services.

[63] Until fiber optic cables are introduced, satellites are the only cost effective means of transmission for digital services as well as television services. Further, satellites would appear to be the cost effective medium for thin (low density) traffic paths.

[64] We also note that our facility loading guidelines guarantee Comsat a definite market share of IMTS traffic. See n. 27, *supra*.

[65] Under the Comsat and AT&T Memorandum of Understanding signed June 3, 1985, Comsat will sell its interest in the multi-purpose earth stations to AT&T by year-end 1987. When the sale is completed, Comsat would no longer be dominant in the provision of this service. We would except, however, that AT&T would then be dominant in its provision of multi-purpose earth station services unless competition for the provision of this service develops. We will make a determination on this issue when considering the transfer application.

[66] See Comments of SIN and joint comments of ABC, NBC and CBS.

[67] We have also authorized a number of IBS/TV earth stations. Most of these, however, are being built so as to only receive IBS.

[68] Fiber optic submarine cables are currently being planned for the Pacific Ocean, Atlantic Ocean and the Caribbean.

[69] *See*, American Satellite Corp., 55 FCC 2d 1, 2 (1975).

[70] For example, IRI was the first carrier authorized to provide IBS service and the first carrier to construct an IBS earth station.

[71] The structural separation of Comsat activities has developed in a series of Commission orders and has minimized the possibility of cross-subsidization from Comsat's dominant to its non-dominant activities. Further orders provide for separate accounting treatment for monopoly and competitive services and assure arms-length dealings between the competitive and space segment divisions. Communications Satellite Corp., Mimeo No. 7025, released September 13, 1985; Changes in the Corporate Structure and Operations of the Communication Satellite Corporation, 90 FCC 2d 1159 (1982) (First Structure Order), recon., 93 FCC 2d 701 (1983) (First Structure Recon.); Second Memorandum Opinion and Order, 97 FCC 2d 145 (1984) (Second Structure Order), recon., 99 FCC 2d 1040 (1984) (Second structure Recon.); Report and Order, FCC 84-178, 50 FR 18304 (April 30, 1985) (Final Structure Order).

70. We do not believe that the Comsat subsidiary offering competitive services has any substantial advantage over any other carrier offering the same or similar services. Comsat International must take space segment from Comsat pursuant to the same tariff under which other carriers take space segment. Further, contrary to the arguments raised by some commenters, Comsat International has no advantage over other carriers merely because Comsat is the U.S. representative to INTELSAT. Comsat must treat Comsat International as it does any other carrier with respect to information received from INTELSAT. Thus, any information from INTELSAT available to Comsat International is available at the same time to all other carriers. To the extent that some benefit may flow to the subsidiary because of its association with the parent corporation, we do not believe that any such indirect benefit warrants classifying the subsidiary as dominant for IBS and other end-to-end services.

71. Finally, the Commission requires Comsat to submit monthly and yearly financial statements as well as a consolidated capitalization plan. In these filings Comsat must not only submit information by subsidiary but it also must treat the various non-jurisdictional activities in Comsat International separately.[72] Thus, the Commission will be in a position to detect any attempts on the part of Comsat at cross-subsidization or other anticompetitive behavior.[73] We therefore find Comsat non-dominant in the provision of competitive non-IMTS services (IBS and end-to-end services).

4. Foreign Owned Carriers

72. In the *NPRM* we proposed maintaining full regulation for all foreign owned carriers providing international service.[74] That is, all foreign owned carriers would be dominant for all services to all foreign points. We continue to have concerns about reciprocity (market entry) as well as market distortions (unequal interconnection and discrimination) that may occur due to foreign owned carriers operating in concert with their parent organization. Therefore, as a threshold matter, all foreign owned carriers will be considered dominant. The most efficient way to encourage the granting of operating agreements and to discourage market distortions is to classify all foreign owned carriers as dominant. This classification, coupled with the monitoring of the operating practices of foreign owned carriers and the direct conditioning of specific section 214 authorizations on the granting of operating agreements and on the filing of specific traffic and revenue data should assure that our policy goals are met.[75]

73. We believe that it is in the public interest to closely monitor foreign owned carriers' operating arrangements and tariffs to ensure that markets are not manipulated in such a way that harms U.S. based carriers, U.S. interests and U.S. users. Thus, we will condition Section 214 authorizations granted to foreign owned carriers to require these entities to submit quarterly country-by-country revenue and traffic reports for all the countries which they provide service. This will allow us to monitor transiting, refiling and return flow traffic patterns.[76] Further, we remain concerned about the opening of foreign markets to U.S. carriers. Thus, we will also consider, on a case-by-case basis, attaching conditions on Section 214 certificates filed by foreign owned carriers relating to reciprocal entry by additional U.S. carriers. Under these requirements we could, for example, condition an authorization granted to a foreign owned carrier to provide service between the U.S. and the jurisdiction of its parent or some other jurisdiction within its parent's control on the granting of operating agreements to additional U.S. carriers for a particular service and traffic path.

E. Implementation of International Competitive Carrier

74. In the *NPRM* we proposed streamlining certain tariff and facilities licensing regulations for non-dominant international carriers. With the exception of a few adjustments we adopt the proposals as contained in the *NPRM*.

75. A number of parties argued that we should move directly to forbearance for non-dominant carriers based upon our domestic experiences with *Competitive Carrier*. We still believe, however, that streamlining is a better first step in this dynamic and changing market. As we gain experience with streamlined regulation and as the new international market structure evolves further, we will be in a better position to evaluate additional streamlining and forbearance options.

1. Tariff Requirements

76. In the *NPRM* we tentatively proposed to subject the tariffs of non-dominant carriers to the streamlined rules developed in the domestic *Competitive Carrier* proceedings. Specifically, we proposed that tariffs filed by carriers for services for which they have been found to be non-dominant are presumptively lawful. Further, only fourteen days advance notice would be required before tariffs for non-dominant services take effect and §61.38 economic and cost support data would not be required to support these tariffs. Finally, we proposed that the standard of review to suspend tariffs for non-dominant services, as in the domestic market, would be whether the

[72] Thus, Comsat International has separate line items in all of its reports for multi-purpose earth stations, IBS and INTEL SAT jurisdictional activities. We recognize that television service, which we find to be a dominant service offering, is not currently broken out in Comsat's reports. However, we expect that data from televisions services will be reported under the category of multi-purpose earth station services. As both are dominant activities there is no danger of cross-subsidization.

[73] A number of parties cited past Commission statements ensuring our continued oversight of Comsat activities. We intend to continue our oversight of Comsat's monopoly and dominant services. However, streamlined regulation will apply to those services provided by Comsat which are offered in a competitive environment.

[74] We proposed in the *NPRM* to define foreign owned carriers as any entity that would be unable to hold a station license under Section 310 of the Communications Act. The Section 310 guidelines present several ownership and nationality scenarios. To avoid confusion, we will adopt here a simpler and we believe a more useful ownership test to determine if a carrier is foreign owned for the purposes of implementing international competitive carrier policies. Because of the importance we place on reciprocity and fairness, a U.S. carrier which is over 15% directly or indirectly foreign owned by a foreign telecommunications entity or on whose board of directors an employee, agent or representative of a foreign telecommunications entity sits shall be considered to be foreign owned for the purposes of implementing international competitive carrier policies. We certainly recognize that some large investments may be passive and in those instances, or for other good public policy reasons, waivers may be granted. We may implement this waiver policy under our public interest standard on a carrier-by-carrier or country-by-country basis. In addition, we recognize that some debt holdings or small equity investments may not be passive and, thus, warrant the imposition of dominant carrier status even if the foreign ownership requirements are not met. On our own notion or through the filings of interested parties we may determine that full regulatory oversight best serves the public interest and is consistent with our policy to obtain reciprocity and fairness.

[75] TDX argues that it should be considered non-dominant to the United Kingdom. We are not equipped, however, to consider the domestic markets of foreign countries. Thus, we find it sufficient here that TDX's parent is based in the United Kingdom and operates a carrier (Mercury) in the U.K. We therefore find TDX to be dominant.

[76] Foreign owned carriers would file data on all U.S. outbound traffic carried, indicating all terminating points as well as data on all U.S. inbound traffic, indicating all originating points. The Section 214 authorization would also be conditioned on the foreign owned carriers filing any ancillary operating agreements entered into by themselves or their parents/affiliates that affect traffic and revenue flows to or from the United States. These quarterly reports would be filed within 90 days from the end of the calendar quarter.

injury to competition which would result if the tariff were allowed to take effect is greater than the harm to the public from not allowing the tariff to take effect. The burden of proof will be on the party asking that the tariff not be allowed to take effect.

77. No party had any objections to our proposals for streamlining the tariffs of non-dominant carriers. Thus, we adopt the streamlined tariff requirements as contained in the *Notice*. TRT argued that we should impose a requirement on Western Union to certify that it is in compliance with the RCCA. We do not believe this to be necessary. However, we do caution all carriers to which the RCCA applies, that this proceeding does not in any way change their interconnection and tariffing responsibilities under that Act.

2. Facilities Licensing Requirements

78. In the NPRM we proposed streamlining the facilities licensing requirements for non-dominant carriers. Specifically, we proposed that once a non-dominant carrier obtained initial § 63.01 certification to provide service to a specific country that carrier would not be required to file further applications to add circuits or change facilities to provide services within that same product market to serve that country. Rather, a non-dominant carrier would merely file notification of the added circuitry on a country-by-country basis. We adopt this proposal here.[77]

79. The streamlining of the section 214 facility authorization process will not adversely affect our oversight, monitoring or facilities planning responsibilities. In fact, we now grant a variety of blanket certifications. International carriers provide a wide range of detailed information that enables us to carry out our responsibilities efficiently and effectively. This includes circuit status reports, activation/usage plans, § 43. 61 data (e.g., revenues, messages and minutes) and § 43.52 documents (e.g., contracts and operating agreements). Additionally, international carriers and the Commission continue to participate in the facilities planning process.

80. Thus, U.S. carriers not found to be dominant for the provision of a specific product will be required only to file an initial application under § 63.01 in order to provide such a product to an additional geographic market or to initially provide such a product to an overseas market. Separate § 63.01 applications will be required to initiate IMTS, non-IMTS, television, space segment or multi-purpose earth station services. In the application for certification to initiate service to a given country a carrier should include adequate information for us to make a finding as to the issue of non-dominance. After obtaining certification to provide a service to a particular geographic market as a non-dominant carrier, the carrier will then only be required to report circuit additions on a semi-annual basis. In order to facilitate our monitoring of the international markets when reporting circuit additions, carriers should note the specific services for which the circuits are being used (e.g., IMTS, telex, IBS, private line, etc.) as well as the country served.[78]

81. Due to the size and scope of the facilities, even non-dominant carriers will be required to file applications to participate in the construction of all major facility projects such as transoceanic submarine cables. Further, non-dominant international carriers will also be required to file applications to acquire capacity from any future private cable or satellite sources. Authorizations on these projects are necessary for our long-range facilities planning responsibility as well as to assure the compliance with any conditions placed on private systems.[79]

82. Two user associations, ADAPSO and ICA, commented at some length on requirements to discontinue service. Implicit in the NPRM was a notice requirement of fourteen days to discontinue service, the same as the domestic requirement. According to these parties the process of finding substitute international private line service can take three months or more due to the need to co-ordinate service between a PTT, a U.S. international carrier and a domestic carrier. Thus, ADAPSO proposed a 120 day notice requirement to discontinue service. No carrier objected to this proposal.

83. We recognize that differences between the international and domestic markets exist. Due to this fact, regulations must be tailored to fit the specific market circumstances. It is important that users are assured that they will not encounter service interruptions. Thus, we will require non-dominant carriers to give 120 days notice prior to discontinuing service.

III. Conclusion

84. Our experience with *Competitive Carrier* in the domestic market has shown that we can successfully eliminate unnecessary and burdensome regulations, benefitting both carriers and users. Given the dynamic growth in the international telecommunications market, it is now proper to increasingly rely on market forces and to streamline the regulations for non-dominant carriers. This will allow carriers to operate more efficiently and will allow them to better respond to customers needs.

85. Our analysis leads us to conclude that international telecommunications are properly divided into IMTS and non-IMTS product markets. Exceptions to this general market division are INTELSAT space segment, multi-purpose earth station services and television services which each constitute separate markets. Further, we conclude that each country represents a separate geographic market. Based upon these market definitions we conclude that only AT&T and the primary service providers of IMTS for noncontiguous domestic points are dominant for the provision of IMTS service. We further conclude that no carrier presently providing non-IMTS service is dominant. The only exception to these general findings are foreign owned carriers who are dominant for all services to countries where they, their parent or some affiliate operate or have a franchise. We find Comsat to be dominant in the provision of INTELSAT space segment, television service and multi-purpose earth station services and non-dominant in the provision of IBS and other end-to-end services.

IV. Ordering Clauses

86. Accordingly it is ordered pursuant to sections 4(i), 4(j), 201–205, 218, 220, 403 and 404 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 218, 220, 403, and 404, the policies, rules, and requirements set forth herein are adopted.

87. It is further ordered that the motion for leave to file late comments filed by TRT Telecommunications Corporation is granted.

88. It is further ordered that the motion for leave to file late reply

[77] These semi-annual filings will be filed on a consolidated basis on February 1 (covering facilities over which service was initiated during the preceding July 1 to December 31 period) and August 1 (covering facilities over which service was initiated during the preceding January 1 to June 30 period) of each year.

[78] At the present time the monthly circuit status reports of some carriers are treated as confidential for several months. Since we believe that circuit additions should be public as they are for domestic non-dominant carriers, non-dominant international carriers are required to file their semi-annual circuit addition data separately from their monthly circuit status reports. Also, any carriers not currently filing monthly circuit status reports will also be required to file the semi-annual circuit addition information.

[79] This is consistent with our recent policy statements concerning private submarine cables and separate satellite systems. *See, Tel-Optik, Separate Systems, supra*, at paragraph 127.

comments filed by International Relay, Inc. is granted.

89. It is further ordered that the additional pleadings filed by The Hawaiian Telephone Company are accepted.

90. It is further ordered that the American Telephone and Telegraph Company, if it desires to provide non-IMTS services on a streamlined basis, shall file a cost allocation and accounting plan as set forth herein.

91. It is further ordered that § 63.09 of the rules, as set forth in Appendix A is adopted.

92. It is further ordered that those carriers identified herein as providing non-dominant international services, shall apply the streamlined regulations identified herein to such services thirty days after publication of this order in the **Federal Register**.

93. It is further ordered that applications on file after the time period specified in the preceding paragraph which under these rules would not have to be filed may be dismissed by the staff.

94. It is further ordered that CC Docket No. 85-107 remain open for additional proceedings upon further order of the Commission.

95. It is further ordered that the staff is delegated authority to prescribe a reporting format for foreign owned carriers if such action appears necessary.

96. It is further ordered that the Secretary of the Commission shall cause the Report and Order to be published in the **Federal Register** and shall mail a copy of this decision to the Chief for Advocacy of the Small Business Administration.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 63—[AMENDED]

Section 63.09 is added to 47 CFR Part 63 to read as follows:

§ 63.09 Special procedures for non-dominant international services.

(a) Any party that would be a non-dominant international communications service provider must file an application pursuant to § 63.01 for certification to initiate that service to any geographic market or to construct, acquire or operate lines in any new major common carrier facility project or to acquire or operate any facility offering capacity on a non-common carrier basis.

(b) Any party certified to provide non-dominant international communications services to a particular geographic market shall report circuit additions on a semi-annual basis. Circuit additions should indicate the specific services provided (*e.g.* IMTS or telex) and the country served. These reports shall be filed on a consolidated basis on February 1 (covering facilities over which service was initiated during the preceding July 1 to December 31 period) and August 1 (covering facilities over which service was initiated during the preceding January 1 to June 30 period) of each year.

(c) Any party certified to provide non-dominant international communications services to a particular geographic market is required to give 120 days notice prior to discontinuing service to that geographic market.

[FR Doc. 85-27874 Filed 11-21-85; 8:45 am]

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47 CFR Part 68

[CC Docket No. 81-216; RM-2845; RM-3195; RM-3206; RM-3227; RM-3283; RM-3316; RM-3329; RM-3348; RM-3501; RM-3526; RM-3530; RM-4054; RM-4087; FCC 85-564]

Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has granted in part and denied in part petitions for reconsideration of *Amendment of Part 68 of the Commission's Rules Concerning Connection of Equipment, Systems and Protective Apparatus to the Telephone Network (Second Report and Order)*, CC Docket 81-216, 49 FR 48714 (December 14, 1984) filed by AT&T Information Systems, Inc. and Verilink Corporation. In The *Second Report and Order* the Commission adopted technical Part 68 standards for FCC registration and interconnection to the telephone network of customer-provided terminal equipment used in conjunction with digital transmission services. Specifically, the Commission has adopted a new § 68.226, to permit FCC registration of digital systems components, modified § 68.218(b)(6), to permit disconnection of terminal equipment from subrate digital services without prior notification to the telephone company, and modified §§ 68.3(bb), 68.3(cc), Figure 68.3(j) and § 68.308(b)(5)(i), to more clearly specify the location of the network interface. The Commission denied requests to adopt Part 68 limitations for allocation of cable loss between the customer and the telephone company, to impose standards for bipolar violations, and to express longitudinal balance limitations in terms of longitudinal voltages. The Commission also declined to require that network channel terminating equipment contain loopback testing capability as a condition of registration.

EFFECTIVE DATE: January 2, 1986.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, Federal Communications Commission, Washington, DC 20554 (202) 634-1832.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 68

Administrative practice and procedures, Communications common cancers, Communications equipment, Reporting and recordkeeping requirements, Telephone.

Memorandum Opinion and Order

In the Matter of Petitions Seeking Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network and Notice of Inquiry into Standards for Inclusion of One and Two-Line Business and Residential Service in Part 68 of the Commission's Rules; CC Docket No. 81-216, RM-2845, RM-3195, RM-3206, RM-3227, RM-3283, RM-3316, RM-3329, RM-3348, RM-3501, RM-3526, RM-3530, RM-4054, and RM-4087.

Adopted October 15, 1985.

Released October 25, 1985.

By the Commission: Commissioner Quello concurring in the result.

1. Before the Commission are requests for clarification and/or reconsideration filed by AT&T Information Systems, Inc. (ATT-IS) and Verilink Corporation (Verilink) of *Amendment of Part 68 of the Commission's Rules Concerning Connection of Equipment, Systems and Protective Apparatus to the Telephone Network (Second Report and Order)*, CC Docket No. 81-216, 49 FR 48714 (December 14, 1984). Responsive pleadings have been filed by the Independent Date Communications Manufacturers Association (IDCMA), several Bell System Operating Companies (BOCs),[1] and GTE Service

[1] The Bell Telephone Company of Pennsylvania; The Chesapeake and Potomac Telephone Companies; The Diamond State Telephone Companies; Illinois Bell Telephone Company; Indiana Bell Telephone Company, Incorporated; Michigan Bell Telephone Company; Nevada Bell; New England Telephone and Telegraph Company; New Jersey Bell Telephone Company; New York Telephone Company; The Ohio Bell Telephone Company; Pacific Bell; South Central Bell Telephone Company; Southern Bell Telephone and Telegraph Company; Southwestern Bell Telephone Company and Wisconsin Bell, Inc.

Corporation (GTE). For the reasons stated below, we grant in part the requests for reconsideration and clarification.

Background

2. In *Amendment of Part 68 of the Commission's Rules Concerning Connection of Equipment, Systems and Protective Apparatus to the Telephone Network (Notice of Proposed Rulemaking)*, "Interconnection Order", CC Docket No. 81-216, 94 F.C.C.2d 5 (1983), *stay denied, Order*, Mimeo No. 1503 (Common Carrier Bureau), released December 23, 1983, *recon. denied*, FCC 84-145, released April 27, 1984, the Commission determined that telephone common carriers had failed to justify restrictive tariff provisions prohibiting customers from providing their own terminal equipment employed in conjunction with carrier provided digital transmission service,[2] and that this equipment would be considered customer premises equipment (CPE) under *Computer II*.[3] (Terminal equipment used in conjunction with digital services is generically referred to as network channel terminating equipment (NCTE).) This decision also gave notice of proposed rulemaking to amend Part 68 of the rules to adopt technical standards for NCTE to ensure that NCTE provided by the customer would not harm the telephone network. In the *Second Report and Order, supra*, the Commission reviewed the responding parties' comments and proposals and adopted amendments to Part 68 to create registration standards for NCTE. These interconnection standards included, *inter alia*, signal power limitations, billing protection standards, longitudinal balance limitations, hazardous voltage limitations, line oscillation protection limitations, and associated definitional and editorial amendments. In the instant petitions, ATT-IS and Verilink request reconsideration and/or clarification of several aspects of the interconnection standards adopted by the Commission. These concern separate registration of NCTE, location of the network interface, cable loss notification requirements, longitudinal balance requirements, loopback testing, line oscillation protection limitations, shorting jacks and bipolar violations. We will discuss and resolve each of the parties' requests.

Arguments and Discussion

3. *Location of the Network Interface.* In the *Second Report and Order* the Commission adopted certain technical standards for direct connection of customer provided terminal equipment to digital services. ATT-IS states that some of these specifications were originally submitted by AT&T in its petition for rulemaking, RM 4087, in which it requested that Part 68 be amended to permit direct connection of digital private branch exchanges (PBXs) to the telephone network, and that they were subsequently employed by the BOCs in their proposed interconnection standards for customer provided NCTE. However, these interface specifications were originally submitted to the Commission by AT&T prior to the Commission's decision in its *Interconnection Order* that found unlawful carrier tariffs prohibiting customer provision of NCTE. According to AT&T-IS, these specifications assume the interface to be between the customer provided terminal equipment (such as digital PBXs) and carrier provided NCTE, whereas the correct location of the interface is between carrier transmission facilities and customer provided NCTE. Accordingly, AT&T-IS proposes modifications to portions of § 68.3(bb), 47 CFR 68.3(bb), concerning the definition of tie trunk transmission interfaces, the through-gain table in § 68.308(b)(5)(i), 47 CFR 68.308(b)(5)(i), and Figure 68.3(j), concerning the zero level decoder test configuration for digital channels. It states that these changes will specify the network interface in a generic manner rather than in terms of specific equipment initially contemplated in RM 4087. IDCMA states that ATT-IS has not sufficiently detailed its objections to the interface adopted by the Commission. While some of the interface specifications adopted in the *Second Report and Order* apply only to certain types of equipment attached to digital services, it may be preferable to retain the more specific language of the specifications adopted by the Commission rather than the more general language proposed by ATT-IS, according to IDCMA. The BOCs state that the rules as adopted are acceptable, but support adoption at the textual changes proposed by ATT-IS as useful clarifications. GTE also supports the ATT-IS proposal.

4. The specifications originally provided by AT&T could be given the interpretation of applying only to interconnection of digital services through NCTE. No rationale had been provided as to why it would be preferable to retain these specifications rather than recast them in less restrictive terms. Indeed, we think it necessary to revise our current provisions as suggested by AT&T-IS to reflect interconnectability at the termination of the carrier's transmission facilities. Accordingly, we are revising the definition of tie trunk transmission interface in § 68.3(bb) and the through-gain table in § 68.308(b)(5)(i) to eliminate reference to PBXs, and Figure 68.3(j) to show the schematic representation of the network interface as being at the termination of the carrier's transmission facilities. *See* Appendix.

5. *Separate Registration of NCTE.* ATT-IS claims that the registration standards for terminal equipment to be connected to digital services are unclear on the registrability of "stand-alone" NCTE. It contends that the rules adopted by the Commission could be interpreted as requiring that NCTE meet every Part 68 technical standard adopted by the Commission as a prerequisite to registration even where the NCTE is intended for use with other terminal equipment which independently meet some of these standards. It argues that the application of the technical standards adopted by the Commission should be clarified to permit, for example registration of NCTE that does not meet the encoded analog content limitations of §§ 68.308(g)(1)(iv) and (g)(2)(v), 47 CFR 68.302(g)(1)(iv) and (g)(2)(v), or the billing protection limitations of § 68.314, 47 CFR 68.314, where the NCTE will be employed with PBXs that independently meet these interconnection requirements. ATT-IS requests that the Commission clarify registration specifications to permit such registration. All commenting parties agree that the Part 68 specifications adopted by the Commission should be interpreted as requested by ATT-IS. The BOCs state that Part 68 is correctly interpreted to require that the device being registered meet only the rules applicable to the functions actually performed by it.

6. We believe the terminal equipment registration program should be administered to promote flexibility in use of terminal equipment, increase customer options, and reduce

[2] The primary digital services offered by telephone carriers are subrate services, which operate at 2.4, 4.8, 9.6, or 56 thousand bits per second (kbps), and high capacity service, also referred to as DS-1, which operates at 1.544 million bits per second (Mbps).

[3] Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 F.C.C.2d 50 (1980) (Final Decision), *reconsideration*, 84 F.C.C.2d 50 (1980), *further reconsideration*, 88 F.C.C.2d 512 (1981), *aff'd sub nom.* CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied* 103 S. Ct. 2109 (1983). In Amendment of § 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), CC Docket No. 85-229, FCC 85-397, released August 16, 1985, the Commission will reexamine the treatment of NCTE as CPE subject to structural separation.

unnecessary regulatory burdens—provided network protection is assured. These objectives are currently being accomplished by registration of terminal equipment partially complying with relevant interconnection standards where that equipment will be employed in conjunction with systems meeting all necessary Part 68 standards. The FCC registration number assigned to terminal equipment intended for use as a component of a system contains a coded indicating this specialized use. *See, e.g.*, Instructions for Completing Form 730, pp. 18–19. We will follow this practice for stand-alone NCTE intended for systems applications. To clarify this practice with respect to terminal equipment attached to digital services, we will additionally include a provision in Subpart C, Registration Procedures, permitting such registration. *See* § 68.226, Appendix. Consistent with current practice, this provision provides that the FCC registration number, which, under § 68.300, 47 CFR 68.300, must appear on the equipment label, will contain a code reflecting the conditions of connectability of the NCTE.

7. *Cable Loss.* Section 68.308(g)(2)(iii), 47 CFR 68.308(g)(2)(iii), requires that signal voltages delivered from terminal equipment at the network interface to 1.544 Mbps digital service be limited so that pulse amplitudes are adequately controlled. These voltage limitations are achieved by selecting appropriate output pulse options defined in § 68.308(g)(2), as a function of reported telephone company cable loss.[4] Cable loss generally is known by the carrier at the time of facility installation. In its petition for reconsideration, ATT–IS contends that this provision should be amended to require the carrier to notify the customer of the cable loss sufficiently in advance of the service start date to enable the customer to engineer the system for maximum advantage.[5] In the alternative ATT–IS requests that Part 68 allocate cable loss between the carrier and the customer. IDCMA contends that the proposed changes are unnecessary because information on cable loss is already provided in a timely fashion, and that virtually all NCTE is adjustable to accommodate a range of cable losses. GTE states that advance notice of cable loss would be desirable but that actual cable loss cannot be determined until after installation of all the carrier's line repeaters. The BOCs note that an industry group, Exchange Carriers Standards Association, T1C1.2, Digital Interface Working Group, is currently working on achieving a method of allocating cable loss between the carrier and the customer, and urges that any Commission rule change should await the deliberations of this group.

8. As noted by the parties in this proceeding, most NCTE is adjustable to change signal output levels, obviating the necessity for any notification of cable loss to the customer prior to installation of carrier facilities. Further, as GTE has stated, actual cable loss cannot be precisely determined until after installation (and testing, if necessary) of the telephone carrier's regenerator nearest the customer's premises. Thus, notification of cable loss prior to installation and engineering of the carrier's facility appears not to be practical. Significantly, while the Commission recognizes that the earliest possible notification would be desirable from the customer's point of view, ATT–IS, has not provided any documentation that the present specification of cable loss by the carrier at the time of installation of carrier facilities is actually causing any customer difficulties. Accordingly, we do not believe that it is necessary to modify § 68.308(g)(2)(iii) to impose new notification requirements on carriers.[6]

9. This is not to say we are opposed in principle to the inclusion in Part 68 of a method of allocating cable loss between the customer and the carrier. However, ATT–IS does not offer a detailed proposal of how this allocation could be achieved. We are prepared to address the matter of specified cable losses when a concrete proposal is submitted to the Commission, preferably on the basis of a consensus achieved by an industry working group.

10. *Longitudinal Balance Limitations.* Section 68.310(l) of the rules, 47 CFR 68.310(l), sets forth longitudinal balance limitations for terminal equipment connected to digital services. Longitudinal balance limitations control the conversion of metallic signals into longitudinal signals. Uncontrolled conversion can result in interference with adjacent channels sharing the same transmission path. ATT–IS contends that longitudinal balance is a function of longitudinal voltage and provides, at best, an indirect measure of potential interference. It proposes that § 68.310(l) be deleted and replaced with direct limitations on longitudinal voltage in § 68.308, Signal Power Limitations. At a minimum, it states that the present § 68.310(l) must be revised because it lacks specific requirements for determining compliance with longitudinal balance limitations in that the voltage level for each subrate service and 1.544 Mbps is not identified. It further claims that the 500 Ohm longitudinal impedance level in § 68.310(l) is inconsistent with § 68.308(e)(4), 47 CFR 68.308(e)(4), which specifies a longitudinal impedance level of 90 Ohms for frequencies greater than 12 kHz. IDCMA states that ATT–IS has not demonstrated any error in the approach selected by the Commission. It states that the rules adopted by the Commission are the same as those set forth in Bell System Technical Reference PUB 62310, Digital Data System Channel Interface Specifications, September 1983. The BOCs state that the ATT–IS proposal should only be considered if at all in a separate rulemaking and industry forum.

11. ATT–IS' proposal to employ direct measures of longitudinal voltage might be a useful approach to protecting against the uncontrolled conversion of metallic signals into longitudinal signals. However, the specific limits it has proposed would apply only to subrate services in, and above, the voiceband. It states that additional tests and studies are required to determine the proper voltage limits for 1.544 Mbps service. Its proposal, therefore, is incomplete; adopting it at this juncture would entail two different methods of achieving network protection, depending on the service involved. We believe, therefore, that it would be preferable to maintain the present approach of § 68.310(l) and to consider employing a method based on direct measurement of longitudinal voltages when a more complete proposal is available, preferably based on industry consensus. With respect to the claim that voltage levels for each subrate service and for 1.544 Mbps service are not specified, we note that these levels may be directly derived from Figure 68.310(j) by well understood electrical engineering formulas.[7] Accordingly, it is not necessary to separately specify voltage levels for each digital service. Additionally, there is no conflict in the impedance levels specified in §§ 68.310(l) and 68.308(e)(4)

[4] Cable loss refers to the attenuation in signal strength that occurs as a signal is transmitted over the local loop.

[5] Knowledge of cable loss enables the customer to adjust the output of his terminal equipment to ensure adequate signal strength without exceeding signal power limitations.

[6] We are additionally clarifying § 68.308(g)(2)(iii) to indicate that "installation" refers to installation and completion of the carrier's facilities, not installation of the customer's terminal equipment.

[7] Figure 68.310(j) is a graph in which one axis is the dB level and the other is the speed of the digital channel expressed in bits per second. The voltage level for any speed digital channel within the range of the graph may be derived under the formula $dB = 20\log V_2/V_1$ where V_1 is a reference voltage.

as they are not concerned with the same subject matter. Accordingly, we will not make any modifications to the longitudinal balance limitations adopted by the Commission.

12. *Disconnection of NCTE from Subrate Services.* Section 68.218(b)(6), 47 CFR 68.218(b)(6), states that it is the responsibility of the grantee of an equipment registration to provide to the user instructions that the telephone carrier must be notified prior to the disconnection of NCTE from subrate and 1.544 Mbps services. ATT–IS states that this provision should be amended to delete the requirement with respect to subrate services as there is no potential for network harm that could be occasioned by the disconnection of NCTE from subrate services. The BOCs state that repeaters are not ordinarily used with subrate services. Therefore, state the BOCs, the potential harm that could be caused by disconnection of NCTE from repeatered lines (oscillation) does not exist for these services. Other commenting parties agree with the ATT–IS proposal. Accordingly, we will adopt the requested change to § 68.218(b)(6).

13. *Loopback testing.* Loopback testing is an operational mode of NCTE in which the NCTE, in response to a control signal from the telephone carrier's central office, receives and essentially retransmits prearranged sequences of digital signals referred to as loopback protocols. Equipment in the central office compares the signals transmitted and received to ascertain if there are any faults in the digital transmission path. In the *Second Report and Order* the Commission denied a request by telephone carriers that a loopback capability be mandated in NCTE as a condition of Part 68 equipment registration. In its request for reconsideration, Verilink argues that due to the competitive nature of the terminal equipment marketplace, some manufacturers will not include loopback capabilities in NCTE. It suggests that unsophisticated users will employ this equipment, ultimately leading to widespread service problems and expensive repair and testing by telephone carriers and customers. IDCMA states that Verilink has not shown any need for reconsideration on this point. Virtually all NCTE contains loopback capabilities, according to IDCMA, and carrier service charges for fault detection and isolation will provide an incentive for customers to select and deploy NCTE with loopback capabilities. The BOCs support reconsideration on this issue. They state that loopback testing provides the most economical, effective and reliable method of identifying any faults in digital transmissions.

14. In the *Second Report and Order*, para. 16, the Commission discussed the contention by the BOCs that loopback functions should be required as a condition of registration. Loopback testing capability was recognized as a feature that would enhance system reliability and performance; the Commission concluded that competitive pressure—not a Commission rule—should be relied on to provide this feature. The statement by some of the parties that virtually all NCTE does, in fact, have this feature supports the Commission's conclusion. Moreover, the obvious benefits of loopback testing and the expense of the alternative carrier service charges lead to the conclusion that government regulation will be unnecessary to prevent the dangers complained of—customers will demand these features in any event. Verilink has not provided any new information or different arguments than have already been considered by the Commission. *Interconnection Order*, 94 F.C.C.2d at 20. Accordingly, reconsideration is not warranted on this point.

15. *Line Oscillation Protection Limitations.* High capacity digital services employ signal regenerators at regular intervals in the transmission line to preserve waveshape and maintain adequate signal strength. Insufficient signal presence can cause oscillation in regenerators and, therefore, interference to other customers sharing the same transmission cable. To protect against this possible network harm, the *Second Report and Order* adopted line oscillation protection limitations which provide that terminal equipment connected to 1.544 Mbps digital service shall contain components which either: (1) Assure that the outgoing signal meets a specified minimum pulse density requirement or (2) transmit one of three specified "keep-alive" signals. (The NCTE will transmit the keep alive signal when the pulse density falls below the specified minimum level.) The pulse density specified by § 68.318(b)(1) provides:[8]

> This minimum acceptable average pulse density is 0.125. The maximum acceptable length of a continuous sequence of "zeros" is 80 pulse positions.

[8] Only IDCMA commented on this minimum pulse density standard proposed by the BOCs. IDCMA offered that this standard "is not truly representative of the line code characteristics acceptable by transmission facilities at 1.544 Mbps." Reply, p. 19. In the Second Report and Order, the Commission found that IDCMA's objection to the BOC proposal was unsupported and accepted the BOC definition of minimum pulse density. Second Report and Order, para. 18.

16. In its petition for reconsideration, Verilink contends essentially that this minimum pulse density standard will not, in fact, prevent oscillation of telephone company line regenerators. It states that oscillation can occur upon the transmission of eighty continuous zeros except when the eighty zeros are preceded by eleven ones. Both Verilink and IDCMA urge that the proper minimum pulse density standard is that specified in Bell System Technical Reference PUB 62411, or, the essentially similar one in AT&T Tariff F.C.C. No 270, section 5.2.2.A. The minimum pulse standard in PUB 62411 is:

> The [equipment] must not transmit more than 15 "zeros" in a row, and in each and every time window of 8 X (n + 1) bits (where n can = 1 through 23), there should be at least n "ones" present.

Verilink and IDCMA state that the minimum pulse standard in § 68.318(b)(1) is unsupported, and that its adoption instead of that in PUB 62411 did not constitute reasoned decision making. GTE states that the minimum pulse density standard adopted by the Commission represents a significant departure from industry practice. It requests that implementation be deferred for thirty-six months to provide a transition period. The BOCs and ATT–IS state that the eighty zero limitation is the standard necessary to protect the network from harms caused by deficient pulse density. By contrast, the more stringent fifteen zero limitation contained in PUB 62411 and AT&T Tariff F.C.C. No. 270 are designed to assure particular levels of performance, they state.

17. Section 5.5, Pulse Density, of PUB 62411 sets forth pulse density requirements for NCTE connected to 1.544 Mbps digital service. Section 5.5 states that the specified pulse density, *see* para. 15, *supra*, must be met "to insure adequate timing recovery of the regenerative digital facilities and therefore circuit performance. . . ." It is further stated that when this condition is not met "end-to-end system performance will degrade" and that quality of service objectives specified elsewhere in PUB 62411 will not be met. In other words, the minimum pulse density standard urged by Verilink and IDCMA is specifically identified in PUB 62411 as a quality of service performance standard. Significantly, nowhere in that technical publication is that standard specifically related to preventing oscillation of line regenerators. Nor is it specified as the minimum pulse density below which the keep alive signals must be transmitted by the customer's NCTE. Instead, an

entirely different standard more closely analagous to the BOC standard is defined as the point at which keep alive signals must be transmitted and thus prevent regenerator oscillation.[9] Accordingly, we conclude that the standard in PUB 62411 is a performance standard rather than a standard designed to protect against line oscillation, a network harm, and therefore should not be included in Part 68.

18. In general, the Commission has a preference for adopting Part 68 standards which are minimally restrictive yet afford full network protection. While the standard in PUB 62411 would achieve minimum pulse density requirements as an incidental effect of its primary purpose of achieving adequate service performance, the standard adopted by the Commission is specifically tailored as a line oscillation protection limitation and,[10] consequently, is somewhat less restrictive in its pulse density requirement. Therefore, the standard adopted by the Commission is the preferable one for minimum pulse density. On reconsideration, Verilink has not provided any persuasive evidence that the standard adopted by Commission will be inadequate to protect against line oscillation. Indeed, this standard was based on the carriers' own proposal for network protection and is entitled to a strong presumption of validity against the technically unsupported and unverified claims of Verilink. Accordingly, reconsideration on this issue is not warranted.

19. *Shorting Jacks.* In their proposal for Part 68 interconnection standards for terminal equipment connected to 1.544 Mbps digital service, the BOCs requested adoption of a rule which would have prohibited disconnection of NCTE without prior notification to the telephone carrier. (Disconnection of NCTE can terminate a signal on the line and result in oscillation of line repeaters.) The Commission rejected this request on the ground that it would impinge on the consumer's use of NCTE. Instead, the Commission amended § 68.218(b), 47 CFR 68.218(b), to require that the equipment registrant include in its instructions to the user a direction that the carrier be informed prior to disconnection of NCTE. *See* para. 12, *supra*. The Commission additionally noted the suggestion of some of the parties of the use of a shorting jack by the carrier as part of its network interface as a means of automatically maintaining a signal on the line when NCTE is disconnected. *Second Report and Order*, para. 18. In its petition for partial reconsideration, Verilink states that the Commission's "requirement that NCTE contain a shorting jack is contrary to the public interest". Petition, p. 12. It claims that "the shorting jack requirement is unfeasible and technically undersirable" *Id.*, p. 13, allegedly based on technical difficulties in maintaining an adequate signal level.[11] Verilink requests that the Commission amend its rules to eliminate the requirement of a shorting jack.

20. Contrary to Verilink's statements, as pointed out by the parties responding to Verilink's request on this issue, the Commission did not create any Part 68 requirement that NCTE itself contain a shorting jack, nor that it connect to the network through a shorting jack. Rather, it merely indicated that the latter is an alternative available to the carrier to be implemented by them as part of the network termination point to protect against potential harms caused by disconnection of NCTE. Indeed, the Commission specifically stated that shorting jacks could be implemented by carriers without rule amendments. *Second Report and Order*, para. 12. Moreover, Verilink has not demonstrated the infeasibility of shorting jacks; instead, it has only identified some of the technical and cost problems that might have to be overcome in implementing shorting jacks generally. We are not persuaded that the Commission should rescind its determination that carriers may seek to implement shorting jacks as an optional method of protecting against disconnection of NCTE and the network harms that might arise therefrom. If it appears at a later date that disconnection of NCTE from digital services is creating a significant harms and that carriers have chosen not to implement shorting jacks, the Commission can revisit the carriers' request for a Part 68 prohibition on disconnection of NCTE without prior notification to the carrier. Further, we believe that the Commission's amendment of § 68.218(b) concerning instructions from the registrant to the consumer are a less burdensome but adequate method of protecting against harms caused by disconnection of NCTE than the mandatory Part 68 requirement proposed by the BOCs. Accordingly, Verilink's position on this matter must be rejected.[12]

21. *Bipolar Violations.* Verilink states that the digital interconnection rules adopted by the Commission do not contain registration standards for bipolar violations created or introduced by terminal equipment in transmission of digital information.[13] It contends that unrestricted bipolar violations can cause cross-talk interference between transmission paths sharing the same facilities. Verilink requests that Part 68 be revised to protect against this potential harm by precluding unrestricted transmission of bipolar violations. The BOCs, GTE and IDCMA agree that the rules adopted by the

[9] Section 8.2 and 8.4.2 of PUB 62411 provide that a keep alive signal must be transmitted when a signal is absent from the line for more than approximately 150 milliseconds. The keep alive signals specified in PUB 62411 are the same as those proposed by the BOCs and adopted by the Commission.

[10] For this reason, the BOC proposal is more in accord with the purpose of Part 68. Section 68.1 of the rules, 47 CFR 68.1 states:

Purpose. The purpose of the rules and regulations in this part is to provide for uniform standards for the protection of the telephone network from harms caused by the connection of terminal equipment and associated wiring thereto, and for the compatibility of hearing aids and telephones so as to ensure that persons with hearing aids have reasonble access to the telephone network.

Section 68.3(g), 47 CFR 68.3(g), states:

Harm: Electrical hazard to telephone company personnel, damage to telephone company equipment, malfunction of telephone company billing equipment, and degradation of service to persons other than the user of the subject terminal equipment, his calling or called part. *See* § 68.3(g), 47 CFR 68.3(g).

[11] Verilink states that it will be necessary for the shorting jack to achieve a disconnect to reconnect time of 40 microseconds, to have 15 dB artificial lines to maintain signal level and to mirror the load of the NCTE up to 67V at 60 mA.

[12] Verilink has filed a motion for acceptance of supplemental information to its petition for partial reconsideration. This supplemental filing alleges that a delay line ring oscillation can occur when digital signals are trapped in a digital line by disconnection of NCTE from both ends and where the line has been looped back on itself by shorting jacks. It further alleges that shorting jacks may result in signals of insufficient amplitude if line regenerators are not properly spaced and engineered especially where a Type 3 keep alive signal specified in § 68.318(b)(1)(iii) of the rules is contained in the transmission line. It urges the Commission to prohibit this type of keep alive signal. In support of its motion, Verilink states that its supplemental filing was not submitted earlier because the significance of the supplemental information was not previously recognized by Verilink management. Verilink has failed to provide any reason why it could not have fully evaluated the standards adopted in the Second Report and Order and submitted its alleged supplemental information in a timely fashion. Indeed, the Type 3 keep alive signal complained of by Verilink could have been fully evaluated at any time since this keep alive signal was proposed at an earlier stage in this proceeding. Accordingly, its motion for acceptance of its supplemental filing will be denied. Moreover, its contentions are not persuasive when considered on the merits. It has not submitted any test results or other data showing that the alleged delay ring oscillation or inadequate signal strength is likely to create any significant risk of network harm requiring Part 68 standards. If these problems should arise due to improper design of optional shorting jacks or network facilities, the Commission can reexamine this issue.

[13] A bipolar violation consists of two successive positive pulses or two successive negative pulses.

Commission do not address bipolar violations, but they contend that any standards for bipolar violations should be addressed first by industry groups. They point out that bipolar violations are routinely employed in user protocols.

22. Verilink has not provided any factual support in favor of its conclusion that terminal equipment connected to digital services is currently introducing, or is likely to introduce, bipolar violations into the network in an uncontrolled fashion that would cause network harm. Moreover bipolar violations are as a routine matter deliberately employed for network control and signaling. "B8ZS", for example, is a form of coding using bipolar violations employed in connection with clear channel capability.[14] *See* Bell System Technical Reference, PUB 62411, § 5.9, September 1983. When used in this fashion, *i.e.*, as network protocols, bipolar violations do not cause any identifiable network harm. *Id.* Accordingly, we do not find it necessary to address this issue further.

23. *Dates for Implementation of Part 68 Interconnection Standards for NCTE.* As indicated (para. 2, *supra.*) in the *Interconnection Order* the Commission invalidated carrier tariffs prohibiting customer provision of NCTE. The Commission directed carriers to file within thirty days tariff revisions, supported by technical standards, permitting customer provision and interconnection of NCTE. This constituted an interim plan for interconnection of NCTE pending resolution by the Commission of Part 68 interconnection standards issues. In the *Second Report and Order* the Commission established June 30, 1986, as the date for termination of the interim program, *i.e.* the date after which NCTE could be connected to the network for the first time only if registered (the "register only" date). *See § 68.2(f)(2).* Equipment complying with the interim interconnection standards would be considered "grandfathered". Equipment could be registered as of the effective date of the Part 68 standards adopted in the *Second Report and Order, viz.*, January 1, 1985. However, pending consideration of the instant petitions for reconsideration filed by ATT–IS and Verilink, the Commission has maintained the interim program and has not registered NCTE. As it was the Commission's intention to provide an adequate transition period to final interconnection standards for NCTE, we are establishing a new "register only" date of March 31, 1987. NCTE may be registered as of the effective date of the rule amendments adopted today, *i.e.* thirty days after publication of this document in the Federal Register. *See* Appendix, §68.2(f) (1) and (2).

[14] Clear channel capability refers to the use of all 64 kbps of available capacity in each of the twenty-four blocks of information that comprise 1.544 Mbps digital service. Currently, only 56 kbps is used to convey the customer's information; the remaining capacity is used to satisfy pulse density and network control requirements.

Conclusion

24. In view of the foregoing, we will make the modifications discussed, *supra*, to the interconnection standards for NCTE adopted in the *Second Report and Order*. The relevant revised rule sections are set forth in the attached Appendix.

25. Accordingly, it is ordered, That the Petition for Partial Reconsideration filed by Verilink Corporation and the Petition for Clarification and Partial Reconsideration filed by ATT Information Systems, Inc. are granted to the extent indicated above, and are otherwise denied.

26. It is further ordered, That the motion to accept supplemental information filed by Verilink Corporation is denied, and that the supplemental information when considered on the merits is denied.

27. It is further ordered, pursuant to 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 220, 313, 403, 412, and 5 U.S.C. 553, That Part 68 of Commission's rules and regulations, 47 CFR Part 68, is amended as set forth in the attached Appendix, effective January 2, 1986.

28. It is further ordered, That the Secretary shall cause a copy of this order to be printed in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 68—[AMENDED]

Part 68 of the Commission s Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations, Part 68) is amended as follows:

1. The Authority citation for Part 68 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, 48 Stat. as amended, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; 47 U.S.C. Secs. 154, 201, 202, 203, 204, 205, 208, 215, 218, 303, 313, 314, 403, 404, 410, 602.

2. Section 68.2 is amended to revise paragraph (f) as follows:

§ 68.2 Scope.

* * * * *

(f) Grandfathered Terminal Equipment for Connection to subrate and 1.544 Mbps digital services:

(1) Terminal equipment including premises wiring and protective apparatus (if any) directly connected to subrate or to 1.544 Mbps digital services on January 2, 1986 may remain connected and be reconnected to such digital services for life without registration, unless subsequently modified.

(2) New installations of terminal equipments, including premises wiring and protective apparatus (if any) may be installed (including additions to existing systems) up to June 30, 1987, without registration of any terminal equipment involved, provided that these terminal equipments are of a type directly connected to subrate or 1.544 Mbps digital services as of January 2, 1986. These terminal equipments may remain connected and be reconnected to such digital services for life without registration, unless subsequently modified.

3. Section 68.3 is amended to revise paragraph (cc)(5), (cc)(6), (dd) and Figure 68.3(j) as follows:

§ 68.3 Definitions.

* * * * *

(cc) *Tie Trunk Transmission Interfaces.*

* * * * *

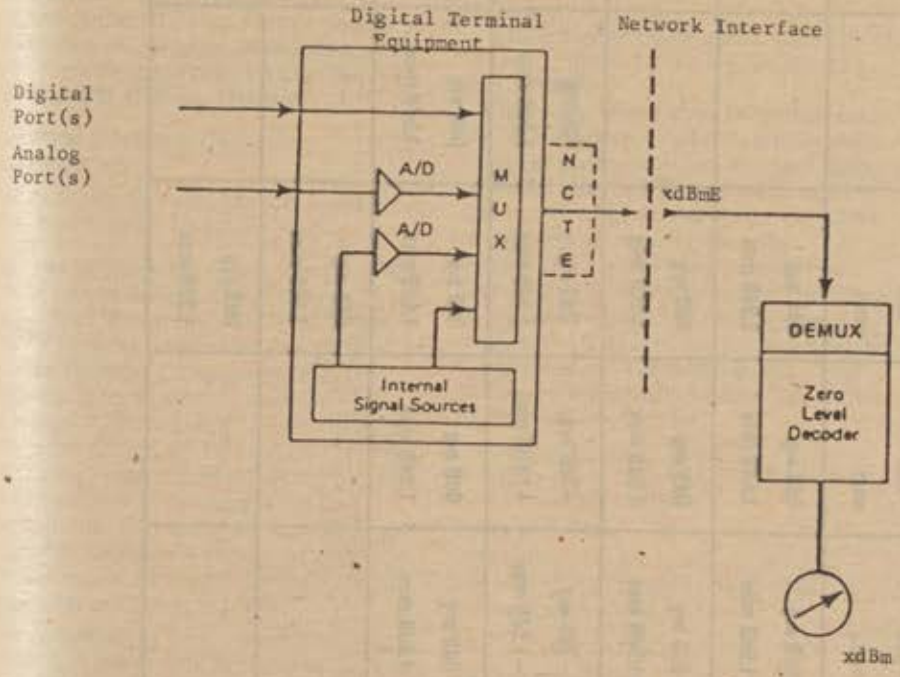
(5) Digital Tandem 4-Wire Interface: A 4-wire digital interface between digital terminal equipment and a digital transmission facility operating at 1.544 Mbps or subrate connecting terminal equipment that provide tandem connections.

(6) Digital Satellite 4-wire Interface: A 4-wire digital interface between digital terminal equipment and a digital transmission facility operating at 1.544 Mbps or subrate connecting terminal equipment that does not provide tandem connections to other digital terminal equipment.

(dd) 1.544 Mbps Digital CO 4-Wire Interface: A 4-wire digital interface between digital terminal equipment and a digital transmission facility operating at 1.544 Mbps connecting to a serving central office.

* * * * *

ZERO LEVEL DECODER TEST CONFIGURATION FOR SUBRATE AND 1.544 MBPS DIGITAL CHANNELS



Note: This assumes That the Decoder Has Resistive 600 Ohm Output Impedance And Is Terminated In a Resistance of 600 Ohms.

Figure 68.3 (j)

4. Section 68.218 is amended to revise paragraph (b)(6) as follows:

§ 68.218 Responsibility of Grantee of Equipment Registration.

* * * * *

(b) * * *

(6) For registered devices use in connection with 1.544 Mbps digital services, instructions that the user must notify the telephone company prior to disconnection of such registered devices.

* * * * *

5. A new section 68.226 is added to Subpart C as follows:

§ 68.226 Registration of Digital Systems Components.

Registered terminal equipment for connection to digital services may be registered as a component of a terminal equipment system. Such terminal equipment shall be connected to digital services only in a manner consistent with the registration code contained as part of the FCC registration number. Such codes shall be determined and assigned in the administration of the registration program.

6. Section 68.308 is amended to revise the table contained in paragraph (b)(5)(i) as follows:

§ 68.308 Signal Power Limitations.

* * * * *

(b) * * *

(5) * * *

(i) * * *

BILLING CODE 6712-01-M

MAXIMUM ALLOWABLE NET AMPLIFICATION BETWEEN PORTS (A)(D)(E)(F)

From (F) \ To		Tie Trunk Type Ports (C)					OPS Ports (2-Wire) (B)	Public Switched Network Ports (2-Wire)	HCC Digital PBX-CO 4-Wire
		2-Wire	4-Wire Lossless	4-Wire CTS	Subrate 1.544 Mbps Satell. 4 W	Subrate 1.544 Mbps Tandem 4 W			
Tie Trunk Type Ports (C)	2-W	0dB avg 1.5dB max	0dB avg 1.5dB max	−4dB nom.	0dB avg 1.5dB max	3dB avg 4.5dB max	−2dB avg −0.5dB max	–	–
	4-W Lossless	0dB avg 1.5dB max	0dB avg 1.5dB max	−4dB nom.	0dB avg 1.5dB max	3dB avg 4.5dB max	−2dB avg −0.5dB max	–	–
	4-W CTS	−4dB nom.	−4dB nom.	−8dB nom.	−4dB nom.	−1dB nom.	−6dB nom.	–	–
	Subrate 1.544 Mbps Satellite 4-W	0dB avg 1.5dB max	0dB avg 1.5dB max	−4dB nom.	0dB avg 1.5dB max	0dB avg 1.5dB max	0dB avg 1.5dB max	–	–
	Subrate 1.544 Mbps Tandem 4-W	−3dB avg −1.5dB max	−3dB avg −1.5dB max	−7dB nom.	0dB avg 1.5dB max	0dB avg 1.5dB max	0dB avg 1.5dB max	–	–
RTE (B)		−2dB avg −0.5dB max	−2dB avg −0.5dB max	−6dB nom.	−3dB avg −1.5dB max	−3dB avg −1.5dB max	0dB avg 1.5dB max	0dB avg 1.5dB max	−3dB avg −1.5dB max
OPS 2-W (B)		−2dB avg −0.5dB max	−2dB avg −0.5dB max	−6dB nom.	0dB avg 1.5dB max	0dB avg 1.5dB max	0dB avg 1.5dB max	0dB avg 1.5dB max	0dB avg 1.5dB max
Public Switch Net 2-W		–	–	–	–	–	0dB avg 1.5dB max	–	–
HCC Digital PBX-CO 4-W		–	–	–	–	–	0dB avg 1.5dB max	–	–

[FR Doc. 85-27879 Filed 11-21-85; 8:45 am]
BILLING CODE 6712-01-C

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Fifteenth Revised Service Order No. 1474; Amdt. No. 4]

Des Moines Union Railway Co. Authorization To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Debtor, (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 4 to Fifteenth Revised Service Order No. 1474.

SUMMARY: Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96-254, this order authorizes Des Moines Union Railway Company (DMU) to provide interim service over the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie), Trustee, and to use such tracks and facilities as are necessary for operations. This order permits DMU to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE: 12:01 a.m., November 21, 1985, and continuing in effect until 11:59 p.m., January 31, 1986, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840 or 275-1559.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1033

Railroads.

Decided: November 18, 1985.

PART 1033—[AMENDED]

Upon further consideration of Fifteenth Revised Service Order No. 1474 (50 FR 2676, 11368, 26774 and 36085) and good cause appearing therefor:

§ 1033.1474 [Amended]

It is ordered, § 1033.1474 *Des Moines Union Railway Company authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor (Richard B. Ogilvie, trustee),* Fifteenth Revised Service Order No. 1474 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

* * * * *

(n) *Expiration date.* The provisions of this order are extended for an additional period of time, and shall expire at 11:59 p.m., January 31, 1986, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 12:01 a.m., November 21, 1985.

This action is taken under authority of 49 U.S.C. 10304-10305 and Section 122, Pub. L. 96-254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Bernard Gaillard, William J. Love, and John H. O'Brien.

James H. Bayne,

Secretary.

[FR Doc. 85-24574 Filed 11-21-85; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[Revised Service Order No. 1500 Amdt. No. 5]

The Milwaukee Road, Inc. Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 5 to Revised Service Order No. 1500.

SUMMARY: Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96-254, this order authorizes The Milwaukee Road Inc. to provide interim service over the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carrier to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE: 12:01 a.m., November 21, 1985, and continuing in effect until 11:59 p.m., January 31, 1986, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M.F. Clemens, Jr., (202) 275-7840 or 275-1559.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1033

Railroads.

Decided: November 18, 1985.

PART 1033—[AMENDED]

Upon further consideration of Revised Service Order No. 1500 (50 FR 11366, 21264, 26774, and 34705, 43715) and good cause appearing therefor:

§ 1033.1500 [Amended]

It is ordered, § 1033.1500 *The Milwaukee Road Inc. authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee),* Revised Service Order No. 1500 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

* * * * *

(n) *Expiration date.* The provisions of this order are extended for an additional period of time and shall expire at 11:59 p.m., January 31, 1986, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 12:01 a.m., November 21, 1985.

This action is taken under the authority of 49 U.S.C. 10304-10305 and section 122, Pub. L. 96-254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Bernard Gaillard, William J. Love and John H. O'Brien.

James H. Bayne,

Secretary.

[FR Doc. 85-27910 Filed 11-21-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Changes to Lists of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates trade in certain wild animal and plant species. Appendices I, II, and III to CITES list those species for which trade is controlled. The nations participating in CITES, including the United States, recently adopted amendments to Appendices I and II. The United States did not enter a reservation on any of the species amendments made at the Fifth Meeting of the Conference of Parties to CITES. This document incorporates these amendments into the Fish and Wildlife Service's regulations implementing CITES.

DATES: The amendments set forth in this notice entered into effect on August 1, 1985, under the terms of CITES. Therefore, this rule is effective November 22, 1985.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, Mail stop: Room 527, Matomic Building, U.S. Fish and Wildlife Service, Washington, DC 20240. CITES documents related to the amendments are available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of Scientific Authority, Room 537, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, at address given above, or telephone (202) 653–5948.

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are listed in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily threatened with extinction, may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control. Difficulty in distinguishing specimens of currently or potentially threatened species from other species is the usual reason for such listings. Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The text of any proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and interested intergovernmental bodies and communicate their responses to all Parties no later than 30 days before the meeting. Amendments are adopted by a two-thirds majority of the Parties present and voting.

The Fifth Meeting of the Conference of the Parties to CITES (COP 5) was held on April 22–May 3, 1985, in Buenos Aires, Argentina. At the meeting, the Parties considered 93 proposals to amend the appendices. These were listed in the **Federal Register** on December 14, 1984, for U.S. proposals (49 FR 48775), and on April 12, 1985, for proposals by other Parties (50 FR 14402). The proposals that were adopted by the Conference of the Parties were announced in the **Federal Register** (50 FR 24918; June 14, 1985), together with a request for comments from the public on whether the Fish and Wildlife Service (Service) should recommend that the United States enter a reservation on any of the amendments. The effect of a reservation would be to exempt this country from implementing CITES for a particular species.

Action of the Parties

Several proposals were withdrawn by the proponent or rejected by vote of the Parties as announced in 50 FR 24918. Proposed amendments that were accepted by the Parties were also announced in 50 FR 24918, and changes that will be incorporated into the Code of Federal Regulations are printed at the end of this notice.

In addition to accepting the various species amendments to Appendices I and II, the Parties adopted an amendment to the Appendices that incorporated into Appendix II all parts and derivatives (with certain exceptions including seeds, spores, pollen, tissue cultures, and flasked seedling cultures) of plants on Appendix II. Previously, all readily recognizable parts and derivatives of Appendix I and II animals and Appendix I plants were subjected to CITES regulations, as well as any readily recognizable parts and derivatives specifically designated for Appendix II plants and Appendix III plants and animals. Now, while parts and derivatives for Appendix III species must still be specifically identified by the proposing Party in order to be regulated, all parts and derivatives of Appendix II plants along with parts and derivatives of Appendix II animals and Appendix I plants and animals are included, unless specifically excluded. Accordingly, paragraph (d) of § 23.23 of 50 CFR has been amended at the conclusion of this rulemaking and the described exceptions specifically noted in the revised paragraph. In addition, changes have been made to the species list in § 23.23 that delete the designated parts that were previously only selectively regulated for certain plant species.

Finally, some nomenclatural clarifications were made by the Secretariat that identified synonyms, eliminated reference to more than one species in monotypic families (Stangeriaceae and Welwitschiaceae), transferred *Microcycas calocoma* from one family to another, and listed only at the family level those cases where all species in the family had been individually listed. Certain of these changes are incorporated into the species changes to the Code of Federal Regulations at the end of this notice.

Public Comments

By the end of the public comment period on July 15, 1985, the Service had received six letters from persons and organizations requesting that the United States enter reservations on selected species, three letters from persons and organizations (including one from a consortium whose position was endorsed by 17 member organizations) opposing any reservations, two letters from persons who asked that the United States not enter reservations on the sea turtle amendments, and one letter from an organization urging the United States to take a strong position on adherence to the listing criteria. In addition to comments on reservations, one company requested clarification of the protected status of a particular population or subspecies, and one of the above organizations commented on the Service's position on marine mammal issues and on a related secret ballot.

Specifically, Kellogg Inc. requested that the United States enter a reservation or take a more selective approach on protecting the scarlet macaw (*Ara macao*) and the great green

macaw (*Ara ambigua*) based on their point of origin. Rolf C. Hagen, Inc. asked that the United States reserve on the scarlet macaw. The North American Raptor Breeders' Association and the North American Falconers Association requested the entering of a reservation on the gyrfalcon (*Falco rusticolus*). The latter Association also requested that the U.S. enter a reservation on the lagger falcon (*Falco jugger*). The International Association of Fish and Wildlife Agencies and the Texas Parks and Wildlife Department asked that the United States enter reservations on the three subspecies of the sandhill crane (*Grus canadensis*) not listed as endangered or threatened under the Endangered Species Act. Persons and organizations requesting that the United States not enter any reservations included Ms. Marie C. Peronne, the Natural Resources Defense Council, Inc., and Monitor. The latter indicated endorsement of its position by the American Cetacean Society, American Humane Association, American Society for the Prevention of Cruelty to Animals, Animal Protection Institute of America, Animal Welfare Institute, Center for Environmental Education, Defenders of Wildlife, The Fund for Animals, Greenpeace U.S.A., The Humane Society of the United States, I KARE Wildlife Coalition, International Fund for Animal Welfare, International Primate Protection League, Massachusetts Society for the Prevention of Cruelty to Animals, Society for Animal Protective Legislation, Washington Humane Society, and The Whale Center. The Pet Industry Joint Advisory Council asked that the United States submit a strong statement of position regarding the inadequacy of proposals and the need for adherence to the listing criteria to the Parties to CITES.

Monitor also expressed concern for the U.S. position on the narwhal (*Monodon monoceros*) and the secret ballot taken on this species by the Conference of the Parties. Ms. Anne Meylan and Ms. Karen Bjorndal asked that the United States not enter reservations on amendments concerning sea turtles. Lastly, F.J. Zeehandelaar Inc. raised questions about the listing status of one of the populations of wild ass (*Equus hemionus*).

The comments received are here summarized and a Service response presented for the comments as follows:

Comment—In requesting that the United States enter reservations on various species of interest to them or to take other actions, the North American Falconers Association (NAFA), North American Raptor Breeders' Association (NARBA), Texas Parks and Wildlife Department (TPWD), International Association of Fish and Wildlife Agencies (IAFWA), Pet Industry Joint Advisory Council (PIJAC), and Rolf C. Hagen Inc. either expressed the belief that the identified species did not meet the previously accepted listing criteria and/or stated that various Parties admitted that the information in the species proposals did not meet the criteria. In addition, the Natural Resources Defense Council, Inc. (NRDC), in asking that no reservations be entered, acknowledged that several amendments, some uplistings to Appendix I, and some downlistings to Appendix II, were not based on adequate scientific data.

Response—The United States is concerned whenever the information for uplistings or additions to and deletions from the Appendices does not meet the agreed upon biological and trade criteria. However, the additional protection resulting from transfer of the macaws from Appendix II to Appendix I appears warranted for specific populations of macaws, and some additional protection will be provided to the subspecies and species of cranes as a consequence of the listing of all cranes on Appendix II. The biological information on the gyrfalcon in North America did not strongly support the listing of this population of the gyrfalcon on Appendix I. Nevertheless, the minor impact of these listings on U.S. interests does not appear to warrant the entering of a reservation in view of the effect that such action may have upon U.S. influence to dissuade others from entering reservations for species that genuinely need CITES protection.

Furthermore, entering a reservation for species listed in Appendix II or transferred from Appendix II to Appendix I, would not usually relieve importers or exporters from obtaining CITES permits or CITES-comparable documentation because of the Lacey Act Amendments of 1981, other laws of the United States, and non-Party document requirements by other Parties, depending upon the specific situation as discussed in detail in the section on reservations towards the end of this document. Also, a reservation would not relieve the United States of reporting trade statistics for Appendix I species because of a previous Convention resolution.

However, the United States will seek to have adequate listing information provided with future proposals. The Parties at the recent meeting in Buenos Aires recognized that some proposals were not receiving proper screening prior to action in the Plenary session, and the Parties were interested in improving the process. The United States has already encouraged procedural improvements and will continue to encourage proper review and adherence to listing criteria.

Comment—PIJAC, in asking that the United States submit a strong statement regarding the inadequacy of the information in some proposals, the need for adherence to the listing criteria, and the need for more time for analysis of the proposals during the Conference, urged the Department of the Interior to prepare a position paper to be distributed to the Parties to CITES as well as to the members of each delegation attending the Fifth Meeting of the Conference of the Parties to CITES.

Response—The United States is concerned that the information contained in the proposals for changes in the Appendices is sometimes inadequate and that time for proper screening of the proposals was not available at the Fifth Meeting of the Conference of the Parties to CITES. The United States has already recommended that this issue be addressed, and the CITES Secretariat has developed, for presentation to the CITES Standing Committee recommendations which will permit a much more thorough screening process. This is considered an effective and efficient approach to resolving the screening problem. While this revised screening process may, if adopted, also promote adherence to the listing criteria, the United States will consider whether the development of a position paper would add to the effectiveness of our efforts to obtain better adherence to the listing criteria.

Comment—Kellogg Inc. and NARBA, in requesting that the United States enter reservations on the macaws and gyrfalcon, stated that the data provided in support of the amendments were inadequate to justify the transfer from Appendix II to Appendix I.

Response—The information available on the status of the scarlet macaw is sufficient to indicate that the species is seriously reduced in numbers in part of its range. The information on the great green macaw is less detailed and, as indicated above, the information on the gyrfalcon indicates that the North American population of this species is not threatened. However, trade in these latter two species is very limited and the impact of these listings on U.S. interests does not appear to warrant entering a reservation.

Comment—Both NAFA and NARBA stated that the gyrfalcon was not

endangered and the latter pointed out that Canada had prepared a well-documented paper on this species. In addition, NAFA stated that the lagger falcon was not endangered.

Response—As previously indicated, the information available on the North American population of the gyrfalcon supports the view that this population is not threatened with extinction. However, the proponents, Denmark and Norway, believed that recent illegal trade posed a risk to other gyrfalcon populations. Reported U.S. trade in this species in 1983 was limited to a single bird. There is also no information to indicate that the lagger falcon is endangered, and there were no reported imports or exports of this species into or from the United States in 1983. The minor impact of these listings on U.S. interests does not appear sufficient to warrant entering a reservation. Trade for educational and captive breeding purposes will still be considered when not primarily for commercial purposes.

Comment—PIJAC, in it comments, observed that transfer of the scarlet macaw from Appendix II to Appendix I was contrary to the final negotiating position of the United States.

Note.—This also was true for other species, and while the United States did not vote on the scarlet macaw, the United States did formally vote against the gyrfalcon, Gruidae, and coral proposals, which were accepted by the Parties.

Response—The Service made it clear in the **Federal Register** notice on negotiating positions that those positions might change in response to new information at the meeting. Actions of the U.S. delegation on species listing votes were based on the predetermined positions to the greatest extent possible. The listing of the scarlet macaw and great green macaw, as well as some other species, was contrary to the announced positions of the United States, and in some instances contrary to the U.S. vote on the proposal. The United States does not have veto authority over listing proposals, and the success of this Convention depends upon understanding and cooperation among all Parties. A reservation could be entered when such actions are clearly contrary to U.S. interests. However, these listings were not considered sufficiently contrary to U.S. interests to recommend entering a reservation, and in addition, entering a reservation would weaken the U.S. efforts to persuade others to withdraw reservations or not to enter reservations for species that genuinely need CITES protection. Therefore, in the interest of maintaining uniform application and enforcement of CITES, the United States has determined that the better course is to accept the changes to the Appendices adopted by the Conference of the Parties.

Comment—Kellogg Inc., in requesting that the United States either enter a reservation for the two species of macaws or adopt a more selective approach to protecting the species based on their point of origin, expressed the concern that the transfer of these species to Appendix I indirectly penalized those Central American nations that do properly manage their wildlife resources. PIJAC, in pointing out that no data was submitted to indicate that the scarlet macaw was endangered in South American countries, expressed the concern that transfer of this species to Appendix I would preempt any range State from allowing controlled export of the species as part of a rational harvesting program.

Response—The transfer of scarlet and great green macaws to Appendix I should not be viewed as penalizing Central American countries inasmuch as: (1) The proposal was submitted by Costa Rica, (2) the Service believes that most South and Central American countries voted for the proposal (the Service believes that Bolivia was the only range State that voted against the proposal; the vote of the parties on the uplisting of the scarlet macaw was 28 for and 4 against), (3) the range States felt that range-wide protection was necessary to control illegal trade, (4) there was only one great green macaw reported as being imported into the United States in 1983, and (5) we understand that the scarlet macaw is generally prohibited from commercial trade in most South and Central American countries including the non-party countries.

In 1983, of the 1,076 live scarlet macaws reported as imported into the United States, 986 were imported from Bolivia where enforcement has been inconsistent, 35 from El Salvador where the species is considered extinct (at least an additional 50 birds were allegedly imported from El Salvador in 1984), 26 from Honduras where the population is low in numbers, and only 17 from other Central and South American Countries including those with more widespread populations.

Comment—Kellogg Inc. and Rolf C. Hagen Inc. suggested that the United States enter a reservation on those populations of scarlet macaws that are not endangered or properly managed by certain range States.

Response—While populations described by geographical area can be listed on the Appendices areas in order to protect an endangered population, the illegal trade that has been uncovered in this species and the wishes of the range States to include all populations of this species support the listing of the species throughout its range.

Comment—Rolf C. Hagen Inc. expressed concern for the impact that transfer of the scarlet macaw from Appendix II to Appendix I would have on the acquisition of birds for captive breeding purposes.

Response—The Service encourages captive breeding of threatened exotic species when it is likely to be successful, when not detrimental to survival of the species, when proper care of animals and plants will be provided, when proper management of breeding programs is established, and when parental stock has been legally obtained. Such captive breeding programs may reduce illegal harvest pressure on wild populations. While the Management Authority of the State of import must be satisfied that specimens of Appendix I species being imported will not be used for primarily commercial purposes, the Service will consider requests to import specimens for captive breeding purposes on a case-by-case basis consistent with the requirements of CITES.

Comment—In requesting that the United States enter a reservation on the three non-endangered subspecies of sandhill cranes, the IAFWA and TPWD noted that these species were being properly managed cooperatively by State fish and wildlife agencies and the Service. Furthermore, they stated that adequate controls on taking, transporting, exporting, and importing these subspecies already exist under the Migratory Bird Treaty Act. A similiar expression on adequate management by the range State was also presented by NARBA who noted that Canada has good management regulations in effect for the gyrfalcon.

Response—Although export and import permits are no longer required for lawfully possessed migratory birds, their parts, nests or eggs, 50 CFR 21. 2(d), the Migratory Bird Treaty Act regulations on taking and possessing migratory birds provide good protection for these cranes in the United States. However, the addition of the non-endangered subspecies of sandhill cranes, which look like the endangered subspecies, to Appendix II may afford some additional protection to the endangered subspecies of sandhill cranes and to other endangered cranes because of exporting and importing permit and inspection processes, and easier recognition of protected species by port inspectors.

The additional U.S. permit requirements will not impact hunters transporting legally-taken possession limits of sandhill cranes with them because of the personal baggage exemption as it relates to Mexico and the United States, and because appropriate documents will be provided to State agencies for issuance with crane permits to non-resident hunters from Canada. Canada may also have a good management program for the gyrfalcon. However, limited trade in the gyrfalcon and easily implemented provisions for export or import of legally taken sandhill cranes do not impact on U.S. interests sufficiently to warrant entering reservations.

Comment—In discussing the reservation issue, PIJAC, TPWD, IAFWA, NAFA, and NARBA expressed their concern that if the United States did not take some dramatic action to emphasize the importance of adhering to the listing rules and failure of the Parties to live by the rules, it would jeopardize the credibility of the Convention. Conversely, Monitor, whose position was endorsed by 17 member organizations, expressed the concern that the entering of any reservation by the U.S. would severely damage the treaty, which the consortium believes to have been weakened by noncompliance due to reservations by other nations and by flouting of the regulations. The NRDC noted that CITES depends upon cooperation and goodwill to be effective, and that the already strained relationships would be further harmed if a country as prominent as the U.S. were to enter a reservation.

Response—The United States is concerned about the credibility of the Convention and, as discussed in our response to the first issue, has taken and proposes to take additional steps to improve the international review of the proposals. Furthermore, this concern should also be pursued as part of the ongoing review of the Appendices. However, we are equally concerned about the weakening of the Convention through noncompliance and unwillingness to cooperate. The factors supporting these listings and the impact resulting from the changes to the Appendices do not present a sufficiently clear and convincing case for the need to enter any reservations. Under these facts, entering a reservation as a matter of strict adherence to the listing rules without a convincing case as to a significant impact on U.S. interests is not warranted. Such action might be interpreted by other nations as sufficient justification for them to enter reservations on species that may require CITES protection. Therefore, it is not considered to be in the interest of the U.S. to enter reservations on these species.

Comment—In requesting that the United States enter reservations for the lagger falcon and gyrfalcon, NAFA raised several concerns about the political nature of the recent meeting and indicated that the failure of the United States to enter reservations would condone political abuses of the system. They also suggested that according to reports, there were manipulations of votes by protectionist interests.

Response—The United States does not condone political abuses of CITES. Furthermore, it is not clear that improper vote manipulations by protectionist interests occurred. We believe it is important to the proper functioning of the Convention that all Parties have an opportunity to attend and participate in the biennial meetings of the Parties and in regional meetings, but we recognize that there may be an appearance of possible conflict of interest when any group subsidizes the attendance of a Party. Therefore, the United States favors efforts by the Secretariat to establish a fund to enable representatives of other nations to attend various meetings of the Parties.

Comment—Ms. Meylan and Ms. Bjorndal requested that the United States not enter any reservations related to the sea turtle amendments.

Response—The United States is able to reserve only on species newly added to or transferred in the Appendices, and inasmuch as all of the sea turtle proposals to downlist selected populations were rejected, reservations are not appropriate. Therefore, these species and populations are retained in their previously protected status.

Comment—Monitor, in its comments endorsed by 17 organizations, expressed concern that the United States abandoned its policy for marine mammal conservation by opposing the proposed uplisting of the narwhal to Appendix I and the proposed listing of the hooded seal in Appendix II. They noted that this opposition was contrary to the final negotiating position announced in the **Federal Register** on April 12, 1985.

Response—The Service continues to be a strong advocate of providing adequate protection of endangered populations of marine mammals, but also supports use and trade in species that are properly managed and that can sustain established levels of harvest. The entering of reservations was not an issue with regard to the narwhal or hooded seal because both proposals were rejected by the Parties. The United States did, contrary to its final published negotiating position of support for the addition of the hooded seal to Appendix II, vote to reject the proposal. This change in position resulted from a review of additional information provided on the species by Canada. The Service, in the **Federal Register** notice on April 12, 1985, did inform the public that new information, which Canada had recently supplied on the population status of and trade in these two species, was under review and would be considered by the U.S. delegation. The United States, after reviewing the extensive biological and trade data provided by Canada, did speak against the proposal to transfer the narwhal from Appendix II to Appendix I, and this position was also contrary to the final published negotiating position of the U.S. Regulations established under the Marine Mammal Protection Act by the National Marine Fisheries Service provide protection for these species with regard to imports into the United States, regardless of the CITES status of these species.

Comment—Monitor also felt that the United States should have objected to the secret ballot, expressed their concern that the secret ballot may have affected the outcome of the vote, and requested an explanation of the U.S. vote on the narwhal proposal.

Response—The United States has never requested a secret ballot at a Conference of the Parties to CITES. However, the secret ballot is a provision of the Rules of Procedures of the Conference of the Parties. It has been used in only a relatively few instances. Any Party can request a secret vote on any species proposal and other Parties are bound to honor this request. With regard to the U.S. vote on the narwhal proposal, the U.S. delegation feels that in keeping with the decision of the Conference of Parties it shall maintain the secrecy of its vote.

Comment—F.J. Zeehandelaar Inc. raised questions about the protected status of the population of wild ass (*Equus hemionus*) occurring in Kashmir, and Xizang (Tibet), Qinghai, and Sichuan Provinces of China, because the proposal to transfer this population, referred to as *Equus hemionus kiang* in the **Federal Register** (50 FR 24918; June 14, 1985), from Appendix II to Appendix I was withdrawn, and because this population is considered in some taxonomic references as a separate species, *Equus kiang*, that was not shown on CITES appendices.

Response—The population, subspecies or species referred to in the uplisting proposal as *Equus kiang* was considered a population or subspecies of *Equus hemionus* when the latter species was placed in Appendix II in 1975. At least one taxonomic reference in 1982 listed *Equus kiang* as a distinct species, but this was not officially acknowledged by the CITES Secretariat. While the uplisting proposal was withdrawn, the CITES Secretariat clarified the taxonomy and status by noting on its updated list of species that *Equus hemionus* remained in Appendix II and that *Equus kiang* was a taxonomic synonym. Thus, this population or subspecies is also protected in Appendix II.

Reservations

Article XV of CITES enables any Party to exempt itself from implementing CITES for any particular species if it enters a reservation with respect to that species. In the case of a nation that is a Party at the time an amendment is adopted, a reservation may be entered only during the period of 90 days after the meeting at which the Parties voted to place the species in Appendix I or II. The Service requested comments on whether it should recommend that the United States enter a reservation on any of the recent amendments.

In deciding on whether or not to recommend that the United States enter any requested reservations, the Service reviewed the public comments and considered the degree of endangerment of the species, the volume of trade in that species, the positions of the range States, the vote of the Parties, the additional protection afforded these or other species or populations of the same species, the additional documentation that might be required, the number of persons affected, and ultimately how U.S. interests might be affected and what was in the best interest of the animal or plant resource that the Convention was intended to protect.

Reserving would do very little to relieve importers in the U.S. from the need for foreign export permits because the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*) make it a Federal offense to import into the United States any animals or plants taken, possessed, transported, or sold in violation of foreign conservation laws. If the foreign nation has enacted CITES as part of its positive law, and that nation has not taken a reservation with regard to the species, part, or derivative, the United States would continue to require, CITES documents as a condition of import. A reservation by the U.S. also would provide exporters in this country with little relief from the need for U.S. export documents. Receiving countries that are party to CITES will generally require CITES equivalent documentation from the United States if it enters a reservation, because the Parties have agreed to allow trade with non-Parties (including reserving Parties) only if they issue documents containing all of the information required in CITES permits or certificates. In addition, reservations on species listed on Appendix I should be treated by the reserving Party as on Appendix II according to Conference resolution 4.25, thereby requiring CITES documents for export of these species to Parties and non-Parties alike.

If the United States entered a reservation, both importers and exporters would be in a confusing situation where CITES requirements are imposed by other countries and not by the United States. This could lead persons to unintentionally violate laws of foreign countries that honor the listing.

The entering of a reservation could interfere with one of the major U.S. goals under CITES which is the full and active compliance with the spirit of this treaty by all countries. Other countries might be less responsive to U.S. requests to participate if they knew the United States had entered a reservation. This applies both to countries that have not yet ratified the Convention and to party countries that have taken harmful reservations that we would like to see withdrawn.

On the other hand, the entering of a reservation could serve another major U.S. goal: To ensure that the list of species in the CITES appendices is appropriate in terms of the purpose of CITES. Selected reservations might help arrest the trend toward mass listing of species when identification between species is practical and could promote better adherence to appropriate listing criteria.

The Department of State, as a matter of general policy, does not favor the United States taking reservations under any treaty except in those cases where, absent a reservation, the treaty would conflict with U.S. law or be impossible to implement. The Service stated in the **Federal Register** (50 FR 24918, June 14, 1985) that it would consider recommending the entering of reservations if it could be shown that implementation of the amendments to the appendices was contrary to the interests or laws of the United States.

The United States did not enter a reservation on any of the species amendments accepted at COP 5 in Buenos Aires, Argentina. The Service did not recommend entering reservations on the scarlet and great green macaw because among other things the species or geographical populations of the species appeared to merit the added protection. Furthermore, in view of the South and Central American support for the proposal, the apparent need for further control of illegal trade, and the U.S. desire to encourage others not to take or to withdraw reservations, the Service did not believe that entering a reservation to make a point about the inadequacy of the biological and trade data provided with the proposal was in the interests of the United States.

The Service did not recommend entering a reservation on the nonendangered subspecies of sandhill cranes because the listing was not considered sufficiently contrary to U.S. interests to warrant reservation, because some additional protection will be provided to threatened crane species and because U.S. influence for strengthening the implemenation of the Convention could be weakened.

The Service did not recommend entering reservations on the gyrfalcon or lagger falcon because of the limited commercial trade in these species in the United States, and because it is not considered sufficiently contrary to U.S. interests to warrant entering a reservation. However, the United States is concerned about adherence to appropriate listing criteria and will press for a more thorough screening process. The Parties recognized at the recent meeting that the screening of animal proposals was inadequate. The United States has already recommended that this issue be addressed by the Central Committee.

Note.—The Department has determined that amendments resulting from proposals made by the United States are not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347) and therefore, the preparation of an Environmental Impact Statement is not required. The Department also has determined that this is not a major rule under Executive Order 12291 and that it does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

This rule simply implements changes in the list of species in the CITES appendices that already have been approved by the Conference of the Parties, and that the United States is bound to accept unless it enters any reservations. The period of time during which the United States could have entered a reservation on any of these

amendments ended on August 1, 1985. Earlier **Federal Register** notices informed the public about these amendments and allowed an opportunity for comment on them. Therefore, the Department of the Interior has determined that good cause exists for making this rule effective upon publication (5 U.S.C. 553(d)).

This notice was prepared by Dr. Charles W. Dane, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Regulation Promulgation

For reasons set out in the preamble of this notice, Part 23 of Title 50, Code of Federal Regulations is amended as follows:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 864, 16 U.S.C. 1531–43.

§ 23.23 [Amended].

2. Revise § 23.23 by adding a new paragraph (e)—*Reserved.* and by designating the list following the new paragraph (e) as paragraph (f), and adding introductory wording as follows: "(f) The list of species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora is provided below:"

3. Amend new paragraph (f) of § 23.23 by adding to the list the following species or other groups of animals and plants in alphabetical order under the appropriate taxonomic categories:

Species	Common name	Appendix	Date listed (month/day/year)
CLASS MAMMALIA:	MAMMALS:		
Order Primates:	Primates: Monkeys, Apes, etc.:		
Pygathrix (= *Rhinopithecus*) spp. (except those species with earlier dates).	Snub-nosed monkeys	I	2/4/77
Pygathrix (= *Rhinopithecus*) *roxellanae*	Snub-nosed langur	I	7/1/75
Order Artiodactyla:	Even-toed Ungulates:		
Muntiacus crinifrons	Black muntjac	I	8/1/85
Budorcas taxicolor	Takin	II	8/1/85
CLASS AVES:	BIRDS:		
Order Ciconiiformes:	Herons, Storks, Ibises, Flamingos and Allies:		
Jabiru mycteria	Jabiru	I	8/1/85
Order Falconiformes:	Diurnal Birds of Prey:		
Falco jugger	Lagger falcon	I	7/1/75
Order Gruiformes:	Cranes, Rails, Bustards:		
Gruidae spp. (all species and subspecies except those in App. I and those with earlier dates in App. II).	Cranes	II	8/1/85
CLASS REPTILIA:	REPTILES		
Order Crocodylia:	Crocodiles, Alligators, Caimans, Gavials:		
Crocodylus niloticus (populations in Cameroon, Congo, Kenya, Madagascar, Malawi, Mozambique, Sudan, Tanzania, and Zambia subject to export quotas described by the Secretariat).	Nile crocodile	II	7/1/75
Order Squamata:	Lizards, Snakes:		
Hoplocephalus bungaroides	Broad-headed snake	II	8/1/85
CLASS AMPHIBIA:	AMPHIBIANS:		
Order Anura:	Frogs, Toads:		
Rana hexadactyla	Asian bullfrog	II	8/1/85
Rana tigerina	Indian bullfrog	II	8/1/85
Rheobatrachus spp.	Platypus frog	II	8/1/85
PHYLUM MOLLUSCA:	MOLLUSCS:		
CLASS Pelecypoda (= Bivalvia):	Clams, Mussels:		
Tridacnidae spp. (includes all species in genera *Hippopus* and *Tridacna* except those with earlier date in App. II).	Giant clams	II	8/1/85
PHYLUM ARTHROPODA:	ARTHROPODS:		
CLASS Arachnida:	Arachnids:		
Brachypelma smithi	Red-kneed tarantula	II	8/1/85
PHYLUM COELENTERATA:	COELENTERATES:		
CLASS Anthozoa:	Corals, Anemones:		
Order Scleractinia:	Stony Corals		
Acropora spp.	Staghorn corals	II	8/1/85
Euphyllia spp.	Trumpet corals	II	8/1/85
Faivia spp.	Brain corals	II	8/1/85
Fungia spp.	Mushroom corals	II	8/1/85
Halomitra spp.	Bowl corals	II	8/1/85
Lobophyllia spp.	Brain corals	II	8/1/85
Merulinas spp.	Merulinas	II	8/1/85
Pavona spp.	Cactus corals	II	8/1/85
Pectinia spp.	Lettuce corals	II	8/1/85
Platygyra spp.	Brain corals	II	8/1/85
Pocillopora spp.	Brush corals	II	8/1/85
Polyphyllia spp.	Feather corals	II	8/1/85
Seriatopora spp.	Bird nest corals	II	8/1/85
Stylophora spp.	Cauliflower corals	II	8/1/85
CLASS Hydrozoa:			
Order Athecata:			
Millepora spp.	Fire corals	II	8/1/85
CLASS Alcyonaria:			
Order Coenothecalia:			
Heliopora spp.	Blue corals	II	8/1/85
Order Stolonifera:			
Tubipora spp.	Organ-pipe corals	II	8/1/85
PLANT KINGDOM:	PLANTS:		
Family Theaceae:	Tea family:		
Camellia chrysantha	Yellow-flowered camellia, Jinhuacha	II	8/1/85
Family Zamiaceae:	Zamia family, Cycads:		
Ceratozamia spp.	Ceratozamia, Horncone	I	2/4/77
Microcycas calocoma	Palma corcho, Microcycas	I	7/1/75

4. Amend new paragraph (f) of § 23.23 by revising the existing entries for particular species on the list to read as follows:

Species	Common Name	Appendix	Date listed (month/day/year)
CLASS MAMMALIA:	MAMMALS:		
Order Carnivora:	Carnivores:		
Felis bengalensis bengalensis	Leopard cat	II	7/1/75
Vulpes (=Fennecus) zerda	Fennec fox	II	4/22/76
CLASS AVES:	BIRDS:		
Order Falconiformes:	Diurnal Birds of Prey:		
Falco rusticolus	Gyrafalcon	I	7/1/75
Order Psittaciformes:	Parrots, Parakeets, Macaws, Lories:		
Ara ambigua	Great green macaw	I	10/26/76
Ara macao	Scarlet macaw	I	10/26/76
CLASS REPTILIA:	REPTILES:		
Order Crocodylia:	Crocodiles, Alligators, Caimans, Gavials:		
Crocodylus niloticus (except those populations on App. II)	Nile crocodile	I	7/1/75
Crocodylus porosus (except the population of Papua New Guinea, the Australia population subject to ranching, and Indonesian population subject to export quotas).	Salt-water Crocodile	I	7/1/75
Crocodylus porosus: Papua New Guinea population, the Australian population subject to ranching, and the Indonesian population subject to export quotas described by the Secretariat.	Salt-water Crocodile	II	7/1/75
CLASS AMPHIBIA:	AMPHIBIANS:		
Order Anura:	Frogs, Toads:		
Bufo periglenes	Montevere toad	III	7/1/75
PLANT KINGDOM:	PLANTS:		
Family Araliaceae:	Ginseng family:		
Panax quinquefolius	American ginseng	II	7/1/75
Family Araucariaceae:	Monkey-puzzle tree family:		
Araucaria araucana all populations except that of Chile	Monkey-puzzle tree	II	7/1/75
Family Compositae (=Asteraceae):	Aster family, Composites:		
Saussurea lappa	Costus, Kuth roots	I	7/1/75
Family Cyatheaceae:	Cyathea family, Tree ferns:		
All species in the family except those with an earlier date		II	2/4/77
Cyathea (=Hemitelia) capensis		II	7/1/75
Cyathea dredgei		II	7/1/75
Cyathea mexicana		II	7/1/75
Cyathea (=Alsophila) salvinii		II	7/1/75
Family Cycadaceae:	Cycas family, Cycads:		
All species in the family		II	2/4/77
Family Dicksoniaceae:	Dicksonia family, Tree ferns:		
All species in the family		II	2/4/77
Family Dioscoreaceae:	Yam family:		
Dioscorea deltoidea	Kniss, Kurta	II	7/1/75
Family Fagaceae:	Beech family:		
Quercus copeyensis	Roble, Copey oak	II	7/1/75
Family Meliaceae:	Mahogany family:		
Swietenia humilis	Cabana, Mexican mahogany	II	7/1/75
Family Stangeriaceae:	Stangeria family:		
Stangeria eriopus (=Stangeria paradoxa)	Stangeria, Fern-leafed cycad	I	7/1/75
Family Sterculiaceae:	Sterculia family:		
Pterygota excelsa (=Basiloxylon excelsum)		II	7/1/75
Family Welwitschiaceae:	Welwitschia family:		
Welwitschia bainesii (=Welwitschia mirabilis)	Welwitschia	I	7/1/75
Family Zygophyllaceae:	Caltrop family:		
Guaiacum sanctum	Lignum-vitae	II	7/1/75

5. Amend new paragraph (c) of § 23.23 by removing the existing entries for particular species and plant families (if all species and genera listed under the family are deleted, remove the family heading), as follows:

Species	Common name	Appendix	Date listed (month/day/year)
ANIMAL KINGDOM:	ANIMALS:		
CLASS MAMMALIA:	MAMMALS:		
Order Primates:	Primates: Monkeys, Apes, etc.:		
Rhynopithecus roxellanae	Snub-nosed langur	II	7/1/75
PLANT KINGDOM:	PLANTS:		
Family Caryophyllaceae:	Pink family:		
Gymnocarpos przewalskii		I	7/1/75
Melandrium mongolicus		I	7/1/75
Silene mongolica		I	7/1/75
Stellaria pulvinata		I	7/1/75
Family Cycadaceae:	Cycas family, Cycads:		
Microcycas calocoma	Palma corcho, Microcycas	I	7/1/75

Species	Common name	Appendix	Date listed (month/day/year)
Family Haemodoraceae:	Bloodwort family:		
Anigozanthos spp	Kangaroo paws	II	6/28/79
Macropidia fuliginosa	Black kangaroo paw	II	6/28/79
Family Leguminosae (=Fabaceae):	Pea family:		
Ammopiptanthus mongolicum		I	7/1/75
Thermopsis mongolica		II	7/1/75
Family Proteaceae:	Protea family:		
Banksia spp	Banksias	II	6/28/79
Conospermum spp	Smoke bushes	II	6/28/79
Dryandra formosa	Showy dryandra	II	6/28/79
Dryandra polycephala		II	6/28/79
Xylomelum spp	Woody pears	II	6/28/79
Family Rutaceae:	Rue family:		
Crowea spp	Croweas	II	6/28/79
Geleznowia verrucosa		II	6/28/79
Family Stangeriaceae:	Stangeria family:		
All species except that in App. I		II	2/4/77
Family Thymelaeaceae:	Mezereum family:		
Pimelea physodes	Qualup bell	II	6/28/79
Family Verbenaceae:	Verbena family:		
Caryopteris mongolica		II	7/1/75
Family Welwitschiaceae:	Welwitschia family:		
All species except that in App. I		II	2/4/77

6. Paragraph (d) of § 23.23 is revised to read as follows:

* * * * *

(d) All living or dead animals and plants in Appendix I or II and all readily recognizable parts and derivatives thereof are subject to the regulations of this Part, except for the following for plants in Appendix II: (1) Seeds, spores, and pollen (including pollinia) other than seeds of Cycadaceae spp., Stangeriaceae spp., and Zamiaceae spp.; (2) tissue cultures and flasked seedling cultures; (3) parts and derivatives, other than roots and readily recognizable parts thereof, of *Panax quinquefolius;* (4) fruits and parts and derivatives thereof of naturalized or artificially propagated Cactaceae spp., and separate stem joints (pads) and parts and derivatives thereof of naturalized or artificially propagated species of *Opuntia* subgenus *Opuntia;* (5) separate leaves and parts and derivatives thereof of naturalized or artificially propagated *Aloe vera;* and (6) cut flowers of artificially propagated Orchidaceae spp., and fruits and parts and derivatives thereof of artificially propagated *Vanilla* spp. All living or dead animals and plants included in Appendix III, and readily recognizable parts or derivatives thereof specified in the list of species, are subject to the regulations of this part.

* * * * *

Dated: October 15, 1985.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-27877 Filed 11-21-85; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 50, No. 226
Friday, November 22, 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 70

Voluntary Standards and Grades for Poultry

Correction

In the correction to FR Doc. 85-25383, appearing on page 45829, in the issue of Monday, November 4, 1985, make the following correction:

In the second column, item (9) should read:

§ 70.222 [Corrected]

(9) On the same page, in the third column, in § 70.222(c), in the fourth line, "lilum" should read "ilium".

BILLING CODE 1505-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 70, 72, 73, and 74

Changes to Safeguards Reporting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: On August 27, 1985 (50 FR 34708), the NRC published for public comment amendments to its regulations for the reporting of safeguards events. The proposed rule would clarify the reporting requirements for NRC licensees and would improve the NRC safeguards event data base by requiring more uniform safeguards event reports. The comment period for this proposed rule was to have expired on November 27, 1985. Since the supporting guidance for the rule was not available for licensee inspection for more than 60 days into the rule's 90-day public comment period, the NRC has decided to extend the public comment period for the rule to coincide with that of its supporting guidance. The extended comment period now expires on December 31, 1985.

DATES: The comment period has been extended and now expires on December 31, 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 received before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. Comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Yardumian, (301) 427-4753, or Priscilla A. Dwyer, (301) 427-4773, Safeguards Reactor Regulatory Requirements Section, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 18th day of November, 1985.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Executive Director for Operations.

[FR Doc. 85-27931 Filed 11-21-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ASO-18]

Proposed Alteration to Christiansted, St. Croix, VI, Transition Area

AGENCY: Federal Aviation Administation (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to enlarge the Christiansted St. Croix, VI, Transition Area to accommodate operations conducted under instrument flight rules (IFR) to and from Christiansted Harbor Seaplane Base.

DATES: Comments must be received on or before January 6, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 85-ASO-18, Federal Aviation Administation, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administation, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ASO-18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date

for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) 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 the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide sufficient controlled airspace within which operations conducted under IFR to and from Christiansted Harbor Seaplane Base would be afforded the protection of the increased VFR minimums associated with controlled airspace. IFR departures from Christiansted Harbor Seaplane Base are normally assigned headings between 360° clockwise to 090° and sufficient controlled airspace does not currently exist to accommodate such controlled operations. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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

ICAO Consideration

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention of International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (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), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Christiansted St. Croix, VI [Amended]

By removing the words "and that airspace" and substituting the words "within a 6.5-mile radius of Christiansted Harbor Seaplane Base (lat. 17°45'11" N., long. 64°42'24" N.); and that airspace" and by removing "VOR" wherever it appears and substituting "VOR/DME." Also, by removing "068°" wherever it appears and substituting "069°."

Issued in Washington, D.C., on November 13, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-27864 Filed 11-21-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM85-1-000 (Part D)]

Regulation of Natural Gas Pipelines After Partial Decontrol

Issued November 19, 1985.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Supplemental Notice of Public Hearing.

SUMMARY: On October 9, 1985, the Commission issued a Notice Requesting Supplemental Comments, 50 FR 42372 (Oct. 18, 1985), on a Notice of Proposed Rulemaking proposing a block billing procedure for natural gas purchase costs, 50 FR 24130 (June 7, 1985).

In the notice issued on October 9, 1985, the Commission invited oral presentation of data, views, and arguments on the proposal, to be held in Washington, DC, on Wednesday, December 11, 1985.

The Commission will provide an opportunity for all interested persons to present information on December 11, 1985.

DATES: The Public hearing will be held on December 11 and December 12 and will convene at 9:00 a.m. Requests to participate and the amount of time requested must be directed to the Secretary in writing by November 26, 1985. Further notice regarding the schedule of witnesses will be provided following November 26, 1985.

ADDRESSES: The hearing will be held in: Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Requests to participate and questions regarding participation should be directed to: The Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8400.

SUPPLEMENTARY INFORMATION: To facilitate the Commission's preparation for the public conference, commenters are urged to provide a 3-5 page executive summary of their positions on the issues raised in the request for supplemental comments. Each set of comments should provide a concise description of the commenter, use the same numbering system as the Commission's inquiry when answering questions, and indicate by "N/A" when they have not answered a question.

The public hearing will not be a judicial-type proceeding. Persons requesting to speak will be divided into participant panels and will be permitted time to present their remarks. There will be no cross examination of persons presenting statements; however, the Commissioners may question these persons. Any further procedural rules will be announced by the presiding officer at the hearing. Transcripts of the hearing will be available in the public file for this proceeding, Docket No. RM85-1-000 (Part D), in the Commission's Office of Public Information, and may be ordered from that office.

Requests to participate in the hearing should be submitted in writing by November 26, 1985, to the Office of the Secretary, and should request the amount of time required for the oral presentation. This request must be filed separately from any comments filed in this proceeding. Persons participating at the hearing should, if possible, bring 50 copies of their statement to the conference. A list of the participants in the conference will be available in the Commission's Office of Public Information and at the hearing room on the morning the conference is convened.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-27937 Filed 11-21-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-700 A]

Powered Platforms for Exterior Building Maintenance; Public Hearing

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

ACTION: Notice of informal hearing.

SUMMARY: This notice schedules and informal public hearing on OSHA's proposed revised standard on powered platforms for exterior building maintenance (50 FR 2890, January 22, 1985).

DATES: Notices of intention to appear at the informal public hearing and written comments on all relevant issues must be postmarked by January 21, 1985. Testimony and all evidence which will be offered into the hearing record must be postmarked by February 5, 1986. The hearing will be held in Chicago, Illinois, on February 19 and 20, 1986, and will begin at 9:30 a.m. If it is necessary, the hearing will continue on February 21, 1986.

ADDRESSES: Notices of intention to appear and testimony and documentary evidence which will be introduced into the hearing record must be sent to Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3662, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8024. Written comments on all relevant issues must be sent to the Docket Office, Docket No. S-700A, Room N3679, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-7894. The informal pulic hearing will be held February 19, 20, 1986, in the George I Room, The Ambassador West, 1300 North State Parkway, Chicago, Illinois 60610, (312) 787-7900.

FOR FURTHER INFORMATION CONTACT:

Hearing: Mr. Tom Hall, U.S Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3662, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8024.

Proposal: Mr. James Foster, Occupational Safety and Health Administration, Room N3637, U.S. Department of Labor , Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION: On January 22, 1985, OSHA published a Notice of Proposed Rulemaking to revise the current standard for Powered Platforms for Exterior Building Maintenance, 29 CFR 1910.66 (50 FR 2890). Written comments and requests for a hearing were to be received by March 25, 1985. The deadline for comments and requests for a hearing was subsequently extended until June 3, 1985 (50 FR 15756.) On June 26, 1985, OSHA reopened the period in which to file written comments on the Preliminary Regulatory Impact Assessment (PRIA), which had not been available for public review during the earlier comment period. Written comments on the PRIA were to be received by August 1, 1985 (50 FR 27307).

In response to the proposed rule, OSHA has received several requests for public hearings. This notice announces the schedule for an informal public hearing which will be held to examine specific issues raised in the comments and hearing requests as well as other relevant issues. The heaing will not examine issues related to temporary installations used for exterior building maintenance now regulated by 29 CFR 1910.28 OSHA is presently developing a revision of 29 CFR 1910.28. In this scheduled rulemaking hearing, OSHA seeks additional information only on the proposed amendment to the standard on powered platforms for exterior building maintenance, which are permanent installations (29 CFR 1910.66). OSHA specifically invites comments and testimony on the issues listed below:

Hearing Issues

(a) Elevated Interior Building Maintenance

OSHA has proposed in paragraph (b)(1) that the standard would not apply to platform installations used for maintaning the elevated interior of buildings (atriums). At the same time, OSHA requested comment on whether the coverage of atriums should be addressed in a separate standard or whether the proposal should be revised to address atriums. The need for a separate standard was supported by a commentor because of the difference in working environments, the necessity of horizontal and vertical movement of the platform in some installations and the abnormal working position of personnel due to sloping atrium roofs. Several commentors agreed that atriums should be addressed in a separate standard, since these elevated areas are becoming more complex and specific criteria would have to be developed. Other commentors suggested that the present proposal should apply to atriums since a number of conditions are similar to

exterior elevations. OSHA seeks more definitive data and testimony in indentifying those requirements in the proposal which might be included should OSHA decide to include atrium maintenance using permant installations in this standard. What additional requirements should OSHA consider that would be applicable to atrium maintenance? What woul be the anticipated burden of complying with these suggested requirements? OSHA would be particularly interested in obtaining information on working methods, equipment and building modification, maintenance consideration, fall protection, and accident data related to atrium maintenance.

(b) Intermittent Stabilization

(1) Limit on Horizontal Movement of the Platform

Design requirements and various cost factors have been responsible for the development of new types of stabilization systems for powered platforms which involve intermittent stabilization, rather than continuous stabilization. Since the current OSHA standard does not address this new technology, requirements for intermittent stabilization systems have been introduced in the proposed revision. For optimum stability of the platform in an intermittent system and to reduce the risk of employee falls, the proposal in paragraph (e)(2)(iii)(A) requires that the platform should be able to move laterally no more that 14 inches (0.4m) in either direction during steady winds of 40 miles per hour (64.3 km/hr) velocity. This 14-inch (0.4m) limit on lateral displacement would also be required in paragraph (e)(2)(iii)(C) for systems utilizing angulated roping and face rollers for those platforms which do not exceed 130 feet (39.6m) in vertical travel. A number of commentors have objected to the use of this performance criterion for intermittent stabilization systems, and claimed that the platform would displace 14 inches (0.4m) laterally under normal operation and would not cause a person to fall. One commentor suggested that the 14-inch (0.4m) allowable limit be reduced to a more conservative 12 inches (0.3m), while another commentor suggested his limit be increased to 24 inches (0.6m). OSHA is interested in receiving documented data regarding the need for a limit on the horizontal movement of an intermittently stabilized platform. If needed, what should be the maximum limit for horizontal movement? What other variables, such as wind velocity, human reaction time, etc. should be considered in the development of this maximum limit? What is the effect of wind gusts on the stability of persons on the platform if a horizontal limit is not established? Is there a need to provide stabilization guidelines, such as the tables in Appendix C of the proposal? Are there other performance criteria which should be applied to intermittent stabilization systems in lieu of or in addition to the limit on horizontal movement, which are not provided in the proposal?

(2) Tie-in Guides for Upper Building Elevations

In many buildings, there is considerable variation in the design of the upper sections of the building exterior, which inhibits the use of tie-in guides. To provide for these variations, without reducing employee safety, paragraph (e)(2)(ii) of the proposal permits the elimination of stabilizer guides for not more than 50 feet (15.3m) of the uppermost elevation of the building or not more than 75 feet (22.9m) if angulated roping is employed. The distance of 50 feet (15.3m) is the same as the maximum distance permitted between stabilizer guides located on the building face below. Some commentors have suggested that the stabilizer guide exception for the upper elevations be changed to 130 feet (39.6m), since a stabilizer guide exception of 130 feet (39.6m) is permitted from ground level if the installation utilizes angulated roping. Other commentors have agreed with the proposed limit of 50 feet (15.3m) for the upper elevation stabilizer guides. OSHA is interested in receiving more information on the proper spacing of stabilizer guides for the upper sections of a building exterior. Are there criteria which should be used to establish the location of the first stabilizer guide on the building face?

(3) Intermittent Stabilization on Ground Rigged Platforms

The proposal, in paragraph (e)(2)(iii)(A)(6), prohibits the use of an intermittent stabilization system on ground rigged platforms. This prohibition is based on the assumption that for ground rigged platforms stabilizer ties cannot be attached to the building anchors during the first ascent to a roof level. The absence of these stabilizer ties would permit unlimited lateral movement of the platform during its first ascent and expose employees to an unsafe condition. A number of commentors, R.D. Warner Co. Inc. (Ex. 9–34), Becor Western Inc. (Ex. 9–37), and Powered Platforms Mfg. (Ex. 9–23), have stated that there are methods and equipment presently available which permit the use of intermittent stabilization systems on ground rigged platforms. OSHA is intersted in obtaining detailed information on such systems. Have these systems been analyzed and accepted by a professional engineer experienced in such design? What are the relevant equipment costs for such stabilization systems when used with ground rigged platforms? What are the work procedures to be followed by employees in operating these systems?

(4) Building Anchors

The vertical interval between building anchors is limited to 50 feet (15.3m) in paragraph (e)(2)(iii)(A)(I) of the proposal. Some commentors have suggested that this interval should be limited to 40 feet (12.2m), or every three floors, based on their own experiences. In addition, a commentor has recommended that taller buildings require special consideration and the vertical interval should be reduced to 30 feet (9.2m) for buildings of a height in excess of 500 feet (153m). OSHA solicits information on whether a reduction in the maximum vertical interval is justified and will not be a limiting factor in the use of intermittent systems. Also, what criteria should be used, if necessary, for reducing the vertical interval of buildings of a height in excees of 500 feet (153m)?

(c) Button Guide Stabilization System

Another alternative stabilization system in use for powered platforms is the button guide stabilization system. In the proposal, under paragraphs (e)(2)(iii)(B), (B)(1), (B)(2), (B)(3), there are requirements for the guide bars and building buttons, and the relationship between these two components. A number of commentors have stated that there have been problems associated with the use of these systems, such as safety lines catching on the building buttons, misalignment of the buttons due to variances in building construction, button breakage due to guide bar hangups, and hand injuries received in the handling and storage of the guide bars. OSHA is interested in receiving information on these systems which will address these problems. What other requirements should be adopted for the guide bars and building buttons? What should be the proper tolerance in the engagement of the button and the guide bar? Should there be a limit on the weight of the guide bar? What means should be required of these stabilization systems to permit easy engagement of the button and guide bar during the descent of the platform? Should the

button guide system be limited to specific building installations? What is the recommended maximum speed for a platform stabilized with a button guide system? Is there a need to adopt specific maintenance criteria for these systems? Should employees receive additional training to operate such systems?

(d) Supported Equipment

In paragraphs (f)(6)(i), (ii) and (iii), OSHA proposes requirements for supported equipment which utilizes drive wheels to engage the building guides for the purpose of raising and lowering the platform. The basis for these requirements is found in the ANSI draft standard A120.1—November 1981. Some commentors have recommended that these requirements be deleted since they have no knowledge of any system which utilizes such equipment. It is their belief that these requirements were introduced into the ANSI draft in anticipation of future use of this type of equipment. OSHA seeks information on the availability and current use of supported equipment. Are there manned platform installations in use which utilize support methods rather than suspension methods? Are suppliers providing support equipment components? Under what conditions would support methods be used in lieu of suspension methods? Is it anticipated that support equipment will be utilized in future building installations?

(e) Suspension Equipment

(1) Outriggers

In the proposal, under paragraph (f)(3)(iii)(A), OSHA permits the use of transportable outriggers in supporting a ground rigged platform if the point of suspension is limited to 130 feet (39.6m). The point of suspension can be increased to 300 feet (91.8m) if the platform is continuously engaged to the face of the building. Some commentors have claimed that employees are exposed to falling hazards in attempting to raise safety lines and suspension lines 300 feet (91.8m) for ground rigged platforms on a windy day. Other commentors have suggested that the point of suspension should not exceed 200 feet (61.2m) for this type of installation. OSHA seeks further information on the appropriate suspension height, if outriggers are used for ground rigged platforms. What accident data or related information is available to support a specific height limit for the point of suspension? If the use of outriggers is permitted as required in the proposal, should OSHA also require that some means be provided to mechanically raise and lower electrical cable, life lines and wire rope when the point of suspension exceeds 130 feet (39.6m)?

(2) Davits

(i) Similarly, the proposal, under paragraph (f)(3)(iv)(D)(1), limits the height of the point of suspension for davit installations where the platform cannot be raised above the building face being serviced. The platform suspension would be limited to 130 feet (39.6m) if it is ground rigged, uness a continuous means of engagement is provided on the face of the building with a maximum rise limited to 300 feet (91.8m). Commentors have also recommended that the 300 feet (91.8m) suspension height be reduced to 200 feet (61.2m) or less because of employee exposure to falls in lifting or lowering electrical cable, suspension wire rope and life lines. OSHA is interested in any accident data, or other documentation relative to this type of davit installation, which supports a specific height limit for the point of suspension. Should OSHA require mechanical means to raise or lower cable and lines when the point of suspension exceeds 130 feet (39.6m)?

(ii) A commentor has criticized the proposed requirement in paragraph (f)(3)(iv)(F)(1) that a transportable davit weighing more that 75 pounds (34kg) shall be provided with a means for its transport, and claims that the weight permitted for manual transport is excessive and discriminatory toward eployees with limited strength. OSHA solicits suggestions, views and arguments on the proposed requirement and the need to also address davit height limits in this same provision. In addition, OSHA requests comment on whether a requirement should be added which would limit the height of the davit center of gravity to not more that three feet above grade during mechanical transport and installation, except tip-up. Suggestions should be accompanied by supporting data.

(iii) OSHA has proposed in paragraph (f)(3)(iv)(F)(2) that a transportable davit shall be provided with a pivoting socket or base that will allow insertion or removal of a davit at a position of not more than 35 degrees above the horizontal. Several commentors have suggested that this provision be changed to allow davits to be inserted into sockets horizontally and secured before being raised to a vertical position. It was their belief that this change would prevent the possibility of employees sustaining injury or loss of control during the lifting of the davit. OSHA requests comments, views and arguments on the proposed change in requirements, especially with regard to its feasibility, utility and its contribution to hazard reduction.

(3) Secondary Suspension Systems

A number of commentors have objected to the proposed requirement in paragraph (f)(5)(ii)(M) that a secondary suspension system is to be used in conjunction with horizontal life lines, if vertical life lines are not selected for employee protection. It was argued that this provision would eliminate the use of outriggers and davits since the necessary accumulation of the secondary wire rope on the platform would considerably increase the weight of the platform. It was stated that this increased weight would then require a roof carriage installation resulting in higher equipment and building costs. It was further argued that in some geographical areas this proposed requirement would effectively mandate 4-wire suspension ropes when heights exceeded 300 feet (91.8m). One commentor stated that if the proposed requirements for proper engineering, maintenance, and wire replacement were followed, there was no need to require a redundant secondary suspension system. Comments on this subject should be correlated with issue (L)(10) below. In a related comment, it was suggested that OSHA should limit the use of vertical life lines to 300 feet (91.8m) because of the difficulty of handling excessively long lines, and require that employees be secured to the platform with horizontal life lines when such heights exceed 300 feet (91.8m). OSHA requests comments, suggestions and arguments regarding the proposed requirement for a secondary suspension system and on limiting the height of vertical life lines to 300 feet (91.8m). Please submit supporting information with any comments or suggestions provided.

(4) Suspension Wire Rope

(i) A number of commentors have suggested that OSHA expand its proposed inspection and replacement requirements for suspension wire rope in paragraph (g)(5) and also add specific requirements for inspection records and rope maintenance. For example, several commentors have suggested that thorough daily inspections be made of ropes in use, in addition to the 30-day inspection requirement, since the rope is subject to environmental exposure, abuse and vandalism. Also, it was suggested that records of periodic inspections be kept for a period of three years for review. On the subject of wire rope replacement, one commentor stressed the need for replacement at 18-

month intervals, to offset any errors in judging the life of wire rope, while another commentor recommended the use of mandatory replacement criteria rather than the nonmandatory rope replacement criteria listed in Appendix A. In addition, rope maintenance criteria were advocated by another commentor, since OSHA did not specifically address rope maintenance. OSHA solicits comments and suggestions regarding the need for, the content of, and the feasibility of these recommendations. Any suggestions should be accompanied by supporting information. What would be the anticipated burden for employers in complying with the suggested revisions and additions?

(ii) One commentor has suggested that OSHA eliminate the proposed requirement in paragraph (h)(4) that suspension wire rope be reshackled at the non-drum ends at intervals not exceeding 24 months. It was noted that the requirement is based on the elevator industry experience in which elevator ropes are subjected to fatigue failures at the shackles due to hundreds of elevator lifts a day. Powered platforms, it was stated, may only make four or five lifts a day for half the work days in a year and as a result are not subjected to enough operations to justify this requirement. The commentor concluded that the wire rope would probably be replaced because of wire breaks long before there was a need for reshackling. OSHA requests views and arguments on whether this proposed requirement is appropriate. Please provide data in support of any recommendations submitted.

(iii) In the proposal, under paragraph (f)(7)(ii), OSHA has provided the formula which is to be used in calculating the safety factor of the suspension wire rope. The MacWhyte Company has suggested that the proposed formula be amended to take into account the efficiency (E) of the wire rope termination to be used since a wire rope suspension depends greatly upon the termination efficiency. The proposed formula would be amended by adding the efficiency (E) of the wire rope termination to the numerator as follows:

$$F = \frac{S(E)(N)}{W}$$

The introduction of the efficiency factor might require a reduction in the working lead of the platform to maintain the required 10:1 safety factor. OSHA solicits comments, views and arguments regarding the suggested formula change. Supporting information should accompany comments, with emphasis on the feasibility and utility of the suggested change.

(iv) OSHA has received comments on proposed paragraph (f)(7)(i) which suggest that OSHA should require specific types of wire rope terminations, such as babbitted sockets, zinced fastenings or swaged attachments rather than relying on specifications recommended by the hoisting machine manufacturer. In addition, it was suggested that OSHA require that rope terminations be capable of developing not less than 80% of the catalog breaking strength of the wire rope specified by the manufacturer. OSHA requests comments and views regarding these suggested changes to the proposal. Is it appropriate for OSHA to identify the wire rope terminations that are acceptable? Are there any other criteria relative to these terminations that should be required by OSHA? What is the basis for selecting the strength factor of wire rope terminations?

(f) Secondary Brakes

Several commentors have suggested that the proposed requirements for a secondary brake on a hoisting machine in paragraph (f)(4)(ix)(B) are inadequate and should be expanded to include additional specific criteria. Some of the recommended additional criteria are as follows: (1) The brake shall actuate only under prescribed emergency conditions and shall not be bypassed or prevented from operating by any other device; (2) the brake will act on a specific component of a winding drum, traction drum or traction sheave-type hoist; (3) the brake will not fail to operate because of outside contamination; and (4) brake actuation shall impose no more than a specified amount of loading on hoisting system components. OSHA solicits comments and suggestions on the feasibility and appropriateness of increasing the requirements for secondary brakes in the standard. What should be included in these requirements? Would these requirements normally be specified by the Registered Professional Engineer responsible for the design of the equipment? Please provide supporting data.

(g) Electrical Requirements

Several commentors have recommended the elimination of a number of proposed electrical requirements because of duplication in the National Electrical Code (N.E.C.) These requirements are located in the proposal at 29 CFR 1910.66 (e)(11) (ii) and (iii), and at 29 CFR 1910.66 (f)(8). These requirements address voltage drop, equipment power circuit, and protection against electrical overloads. These requirements are not presently covered in OSHA's electrical standards under 29 CFR Part 1910, Subpart-S and therefore would not be enforced by OSHA if they were removed from this proposal. OSHA requests comments, suggestions and arguments regarding these electrical requirements which specifically relate to powered platforms. Should OSHA assume that the N.E.C. provisions will be followed by builders as they relate to powered platforms, therefore obviating the need to include these requirements in the proposal? Are there other electrical requirements in the proposal which are thought to be duplicated in the N.E.C.? Suggestions should be accompanied by supporting information.

(h) Cable Stabilization

OSHA has received a number of conflicting views on the proposed requirement in paragraph (e)(8)(iii) that hanging cables under tension should be stabilized if the vertical travel exceed 600 feet (183.6m). One commenter has knowledge of a number of installations without such stabilization and claims there is no evidence of a hazardous condition. Another commenter recommends that cable under tension should be stabilized at the same distance as those not under tension, which is 200 feet (61.2m). OSHA solicits comments, views, and arguments on the proposed cable stabilization requirement. Please provide supporting data with any suggestions made on this provision.

(i) Equipment

(1) Platform Passage

Several commentors have objected to the proposed requirement in paragraph (f)(5)(ii)(A) that a 12-inch (0.3m) wide passage shall be provided at or past any obstruction on the platform. These commentors contend that the provision would effectively exclude traction hoist units or drum type units mounted on the platform, while others suggest that this provision should not apply if hoists are located not more than 18 inches (0.5m) from the end of the platform. Some commentors have suggested that OSHA should be concerned with safe passage by the obstruction rather than physical dimensions of 12 inches (0.3m), and suggest that there should be an access way which will permit an employee to work on either side of the obstruction. OSHA requests comments and suggestions on this platform passage requirement. Should OSHA modify this

requirement for specific conditions related to type of hoist used and its location on the platform? What would be considered proper access to either side of an obstruction on a platform? Please submit supporting information.

(2) Platform roll

In the proposal, under paragraph (f)(5)(ii)(C), OSHA restricts the platform's inboard to outboard roll about the longitudinal axis to a maximum of 15 degrees from a horizontal plane. One commenter stated that the large allowance of 15 degrees is unacceptable due to additional loading that would be introduced into the platform as a result of such rotation. This commentor suggested 5 degrees as an acceptable roll limit. Another commenter supported the proposed roll allowance of 15 degrees as an acceptable figure. OSHA solicits comment on the feasibility and adequacy of this requirement in addressing platform roll hazards. Any suggestions should be accompanied by supporting information.

(3) Protection of Platform Members

Several commentors have suggested that OSHA be more specific in its proposed requirement of paragraph (i)(2)(iii) that platform members, including wire rope, should be shielded when heat producing processes or corrosive substances are used on the platform. One commentor has suggested that OSHA prohibit the use of a platform and its components if adequate precautions are not taken to protect the platform from damage due to corrosive substances as recommended by the platform manufacturer. It was also suggested that wire ropes contacted by a heat producing process should be considered permanently damaged and removed as a means of platform support. OSHA solicits comments and suggestions regarding the utility and feasibility of requiring specific procedures to protect platform members. Suggestions should be accompanied by supporting data.

(4) Roof Carriage Stability

In some platform installations the carriage system's stability is obtained by a tie-down device secured to the building. One commenter suggested that an interlock be provided to prevent vertical platform movement, unless the tie-down is properly engaged. The proposal does not address this issue, and OSHA requests comments and views regarding the feasibility, utility and burden of the suggested addition to carriage stability requirements. Please provide supporting information with any comments submitted.

(j) Training

In paragraph (i)(1)(iv) of the proposal, employers would be required to provide written work procedures for employee training. The development of work procedures, as a training method, would impose a paperwork burden which did not previously exist. In an effort to comply with the Paperwork Reduction Act of 1980, OSHA is seeking information on whether it should permit employers to develop their own training methods, rather than require written work procedures. In lieu of the procedures, OSHA could require written certification from the employer that an employee has satisfactorily completed his training. Please submit comments and suggestions regarding this alternative to the proposed training methods.

(k) Issues Relative to Personal Fall Arrest Systems

OSHA solicits information and data on a number of issues pertinent to its coverage of personal fall arrest systems for use on powered platforms which are set forth in Appendix D.

(1) Body Belts and Body Harnesses

OSHA is proposing in paragraphs I(d)(1)(i) and I(e)(3) of Appendix D to allow body belts to be used for up to a six foot (1.8 m) free fall distance and a force limit of 10 times the worker's weight (10 g_n) or 1,800 pounds (8 kN). This is consistent with ANSI A10.14–1975 (Ex. 11–1), and a NBS report (Ex. 11–2). It should be noted, however, that the variances and the compliance directive issued by OSHA to allow intermittent stabilization systems for powered platforms require body harnesses to be used. Also, several authorities would restrict or prohibit the use of body belts in fall arrest systems, and allow only body harnesses. For example, the draft ISO international standard for personal fall arresting systems set limits on the arresting force permitted when using a body belt to 5 kN (1,125 pounds) (Ex. 11–3). This draft ISO standard also prohibits the use of a system which would suspend a worker more than 50 degrees from a vertical position after a fall is arrested. OSHA believes that the ISO requirements would effectively eliminate the use of body belts in fall arrest systems, and permit only body harnesses.

Another study conducted by Dr. Maurice Amphoux, et al. (Ex. 11–4), recommends that body belts not be used for fall arrest because of injury potential. It should also be noted that a British Standard (Ex. 11–5) limits the use of body belts to a maximum free fall of two feet (.6 m) and a maximum force of five g_n. In addition, a recent review by the U.S. Air Force Aerospace Medical Research Laboratory of pertinent literature on personal fall arrest systems (Ex. 11–6) concludes that a body belt is not safe for prolonged suspension (especially motionless suspension).

An Appendix D commentor has suggested a force limit of 900 pounds (4 kN) for body belts and chest-waist harnesses, and 1,800 pounds (8kN) for body harnesses. Other commenters have suggested that a limitation for free fall of two feet (.6 m) be placed on body belt systems, and a force limit of five g_n.

In view of this additional information, OSHA requests that interested parties provide information, comment and supportive data as to the use of a body belt in a fall arrest system. Specifically:

(i) Should OSHA allow the use of body belts in personal fall arrest systems? If so, what limitations should be placed on body belt usage?

(ii) Is the proposed six foot (1.8 m) free fall limitation acceptable? Should a two foot (.6 m) or other limitation be adopted for body belts instead?

(iii) Is the proposed 10 g_n or 1,800 pound (8 kN) force limitation for body belts acceptable?

(iv) Is there additional information available which indicates that prolonged suspension in a body belt may be a problem?

(v) If body belts are not allowed in personal fall arrest systems, or if limitations are placed on their use so that body harnesses are more widely used, what are the costs and benefits of using body harnesses, rather than body belts? What is the availability and worker acceptance of body harnesses in the powered platform industry?

(2) Arresting Force Limits

On a related issue, OSHA requests comments and testimony concerning the best approach for stating the maximum arrest limitation in paragraph I(d)(1)(i) of Appendix D. By using deceleration alone as the limitation (as is done in the ANSI A10.14 Standard,) the permitted force value will vary with the weight of the worker. For instance, based on a 10 g_n limitation alone, a 275 pound (125 kg) worker would be permitted by the standard to experience 2,750 pounds (12.3 kN) of force during an arrest. In view of the human tolerance information as discussed above, OSHA believes that this amount of force is unacceptable, and has proposed 1,800 pounds (8 kN) as the maximum force limitation in addition to a 10 g_n deceleration limit.

OSHA requests comments on the following points:

(i) Does the proposal provide a reasonable means of taking into account both deceleration and force. Or should the limitation be expressed solely as either maximum arrest force (pounds force), or the force generated by a maximum arrest deceleration (i.e., g_n)?

(ii) Is the 1,800 pound (8 kN) limitation for body belts and body harnesses proper? If not, what should the limit be? What information is available to support a different limitation for arresting force?

(iii) The suggested test procedures in Appendix D include a 130 pound (59 kg) test weight for lanyard systems. A NBS Report (Ex. 11–2) identified the use of lighter test weights as being more important in meeting the 10 g_n limitation for lanyards than for heavier test weights, because lighter test weights do not cause lanyards to be as elastic as do heavier weights. However, if the standard were to impose only a force limitation on fall arrest systems, a 130 pound (59 kg) test weight would not reflect the forces to which employees over 130 pounds (59 kg) would be exposed during a fall. OSHA requests data, views, and arguments on whether the 130 pound (59 kg) test weight for lanyard systems is appropriate, or whether the 220 pound (100 kg) test weight, which is used for all other systems, should also be used for lanyards during the force test.

(iv) Several commentors have suggested that the test equipment used to measure arrest force have a frequency response of 1,000 Hz. Should this, or another frequency response time be specified in the test methods?

(3) Snap-Hook Design

OSHA has received a number of conflicting views on snap-hook design. Several commentors have suggested that single action snap-hook (as included by the definition of "Snap-hooks" in paragraph I(b)(12) of Appendix D) should no longer be permitted because of possible unsafe conditions (roll-out) and favored a requirement which would mandate the use of double locking snap-hooks. Other commentors expressed the viewpoint that double locking snap-hooks can be susceptible to the same unsafe conditions (roll-out) as single action snap-hooks. OSHA requests suggestions, information, and supporting rationale as to the type of snap-hook which should be permitted. In addition, OSHA requests information pertaining to:

(i) The number of snap-hooks (single action and double locking) in use;

(ii) The increased cost of using double locking snap-hooks rather than single action snap-hooks; and

(iii) Incidents in which either single action or double locking snap-hooks have failed or disengaged in use.

(4) Inspections

OSHA requests comments as to including more definitive inspection criteria in paragraph I(f) of Appendix D for determining when personal fall protection systems are no longer suitable for use. Are such criteria available which could be included in the standard or appendix?

(5) Testing

OSHA requests comments regarding testing of personal fall protection systems. Are manufacturers of this equipment presently performing tests to evaluate their equipment? If so, are these tests similar to those included in Appendix D, Section II of this proposal? Are products currently labeled as meeting a test standard, or the tests proposed by OSHA? What information is currently available to employers regarding compliance of existing personal fall protection equipment to test requirements?

(l) Other Issues Raised by Comments Received on Appendix D

OSHA solicits comments from interested parties on these and other points of concern.

(1) OSHA has proposed mandatory provisions for personal fall arrest systems in Section I of Appendix D. OSHA has also proposed non-mandatory provisions in Section II of Appendix D which provides examples of test methods whose use OSHA would accept for determining compliance with Section I. A commentor on Appendix D has criticized the test methods section as inadequate and suggested that testing be done in accordance with test methods in approved consensus standards for components and subassemblies of systems rather than for a complete system as OSHA has proposed. In addition, this commentor believes that tests should be mandatory. OSHA requests comments and suggestions regarding the need for clarified, mandatory test methods for components and subassemblies of personal fall arrest systems. OSHA would be particularly interested in any information about the existence or development of national consensus standards for the design and testing of components and subassemblies of personal fall arrest systems.

(2) A commentor has criticized the mandatory provisions for failing to spell out how equipment components should be connected, what equipment could be used and the circumstances in which the components and subsystems of a personal fall arrest system would be interchangeable. For example, it has been suggested that OSHA require personal fall arrest equipment manufacturers to label their products indicating when employers could use them interchangeably and with what other equipment. It was also suggested that the components and subsystems, and any combinations thereof that an employer might employ, be tested to meet static and dynamic strength requirements. OSHA solicits comments and suggestions regarding the range of components and subsystems reasonably available to system designers and users, the availability of any nationally or internationally recognized test methods for components and subsystems, and information regarding components and subsystems which are not interchangeable. In addition, although OSHA's requirements cannot be directly imposed on the manufacturers of the requirement, OSHA requests public comment on whether or not a labeling requirement imposed on employers addressing interchangeability would be useful or feasible.

(3) OSHA has presented definitions for key words in proposed paragraph (I)(b) of Appendix D. A commentor has criticized the definitions as incomplete and imprecise. OSHA solicits comments and suggestions regarding the adequacy of the proposed definitions, with special attention directed to the terms discussed below.

(i) The term "body support" has been suggested to replace "body belt," in the OSHA proposal on the grounds that the former, by covering "full body harness" (body harness), more fully describes the equipment which would be appropriate for fall arrest or suspension. OSHA solicits comments and information regarding the appropriateness of the proposed change, focusing on the need to include body harness within the definition. In addition, it has been suggested that OSHA permit employers to use only the body harness for fall arrest. Comments on this subject should be included with issue (k)(1) above.

(ii) OSHA has proposed the term "deceleration device" to describe certain fall arrest components. A commenter has suggested that "deceleration device" is not properly descriptive and that OSHA should instead utilize the terms "fall arrester," "energy absorber" and "self-retracting lifeline/lanyard" to cover the separate components and subsystems involved.

OSHA solicits comments as to how adequately the term "deceleration device" encompasses the components and subsystems which are used to control deceleration. OSHA also requests comments regarding the suggestion that "deceleration device" be replaced by more specific terms. Supporting information should accompany comments, with emphasis on the feasibility and utility of proposed changes and definitions.

(iii) OSHA has proposed the term "fixed anchorage" in Appendix D to describe an attachment point for personal fall arrest equipment. It has been suggested that OSHA specify that the "anchorage" is independent and not part of the personal fall arrest system. It has also been suggested that OSHA require anchorages to have minimum strength of 3,600 pounds, when maximum arresting force is 1,800 pounds or less in order to adequately protect workers in worst case situations. Other commentors have suggested that the anchorage be capable of supporting at least twice the potential impact load of an employee's fall. (Most other components required to have a strength of 5,000 pounds (22.2 kN).) Another commentor recommends that a provision be added to require that a permanent means to anchor lifelines be provided with each powered platform system. OSHA solicits comments, suggestions and information regarding the need for, costs, benefits, and feasibility of the suggested revisions, including alternatives, with special emphasis on the need to specify installation of anchors and identifying them (by such means as markings).

(iv) OSHA has proposed the term "deceleration distance" in Appendix D to describe the distance traversed once the "deceleration device" is activated. It has been asserted that the proposed definition does not adequately distinguish between "free fall distance" and "deceleration distance" because some systems are designed so that, in the case of a fall, friction might not immediately suffice to activate the system. In addition, a commenter criticized OSHA's distinction between "lifeline elongation or deceleration distance" because both followed the onset of fall arrest forces. Other commentors have suggested that lifeline elongation distance be excluded from the 42-inch (1.07 m) maximum deceleration distance specified in proposed paragraph I(d)(1)(ii) of Appendix D. OSHA solicits comments and suggestions on its "distance" definitions and requirements, and requests that any supporting information be submitted. OSHA would be particularly interested in information about situations were personal fall arrest systems have slid rather than engaged in a timely fashion. OSHA also requests information on the viability of a distinction between elongation and deceleration distance and regarding the means available to measure those distances.

(4) An Appendix D commentor has suggested that OSHA quantify the corrosion resistance requirements for hardware in paragraph I(c)(2), referring to the ASTM Salt Spray Testing Standard. OSHA solicits comments and suggestions regarding the utility and feasibility of quantification. Suggestions should be accompanied by supporting information.

(5) A commentor has suggested that self-retracting lifelines and lanyards be required to meet the proposed minimum load requirement (3,000 pounds) of paragraph I(c)(4) of Appendix D with the lanyard or lifeline fully extended. It was also suggested that OSHA specify the maximum arresting force to be transmitted by those devices taking into account the kind of "body belt or harness" used (See issue (k)(1) above). OSHA solicits comments and suggestions regarding the proposed requirements for self-retracting lifelines and lanyards. Please submit supporting information.

(6) In relation to paragraph I(c)(5) of Appendix D, a commentor has suggested that OSHA require proof-testing of dee-rings and snap-hooks at 100 percent of rated load to ensure that defective equipment is not used. OSHA solicits comments regarding the need for such testing and suggestions for possible implementation. OSHA would be particularly interested in information concerning what testing is currently performed or feasible, the cost of testing and any accidents involving defects in such equipment.

(7) Several commentors have suggested that OSHA require that horizontal lifeline subsystems (as included in paragraph I(c)(6) of Appendix D) be designed by "qualified persons" and that the requirements for horizontal lifelines be revised to include more detailed guidance. OSHA solicits comments and suggestions regarding these recommendations. Please submit supporting information.

(8) In relation to paragraph I(f), an Appendix D commentor has suggested that employers inspect personal fall arrest systems and their components for function as well as for appearance. OSHA solicits comments and suggestions regarding the need for, the content of, and feasibility of such inspections. Supporting information should accompany any recommendations. To what extent would inspection for function approximate testing? What would be the anticipated burden of complying with the suggested revision?

(9) Several commentors have suggested that the material in Appendix D on personal fall arrest systems may need to be repeated several times and that it more properly belongs in a separate subpart so that it may be referenced by other standards. OSHA requests comments as to the feasibility and appropriateness of providing criteria for personal fall protection systems in one place in the OSHA General Industry standards.

(10) Several comments have been received on horizontal lifelines used on powered platforms (see paragraph 1910.66(f)(5)(ii)(M). Several commentors have suggested that only a vertical lifeline attached to the building structure be allowed because if the platform were to fall completely, attaching to it would not protect employees. Another commentor pointed out that a horizontal lifeline becomes a vertical lifeline when one end of a platform tips (such as failure of the suspension rope on one end) which could subject an employee to a very long swing free fall (in many cases 20–30 ft.), several times in excess of the allowed six foot free fall, plus almost certain collision injuries with the platform or structure. In addition, several other commentors have pointed out that if a horizontal lifeline is used, the attachment means (i.e., rope grab or rope grip) must be capable of automatically locking in either direction along the lifeline. OSHA requests comments on these suggestions with particular emphasis on: (a) Under what conditions use of a horizontal lifeline on a platform is appropriate; (b) whether or not the strength of the system (including the scaffold suspension means and supports on the roof) is sufficient to arrest a large swing fall; and (c) whether or not the forces generated on the worker are within safe limits. Comments on this subject should be correlated with issue (e)(3) above.

Public Participation in Hearing

Notice of Intention of Appear: Persons desiring to participate at the hearing must have postmarked a notice of intention to appear by January 21, 1986. Such notices must be sent to Mr. Tom Hall, U.S. Department of Labor, OSHA Division of Consumer Affairs, Room N3662, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8024.

The notice of intention to appear must contain the following information.

1. The name, address, and telephone number of each person to appear;

2. The capacity in which the person will appear;

3. The approximate amount of time required for the presentation;

4. The specific issues that will be addressed;

5. A detailed statement of the position that will be taken with respect to each issue addressed; and

6. Whether the party intends to submit documentary evidence and, if so, a detailed summary of the evidence.

Comments: Persons desiring to file written comments must have postmarked such submissions by January 21, 1986. Written comments must be sent to OSHA Docket Office, Docket No. S-700A, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-7894.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than 10 minutes for presentation at the hearing or who will submit documentary evidence, must provide, in quadruplicate, the complete text of testimony, including all documentary evidence to be presented at the hearing. These materials must be postmarked no later that February 5, 1986 and sent to Mr. Tom Hall, U.S. Department of Labor, OSHA Division of Consumer Affairs, Room N3662, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8024.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the hearings.

Any person who has not substantially complied with the above requirement may be limited to a 10-minute presentation and may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge, but may not be allowed to question witnesses.

Notices of intention to appear, testimony and evidence will be available for inspection and copying at the Docket Office, Docket S- 700A, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-7894.

The hearing will commence at 9:30 a.m. on February 19, 1986 in the George I Room, The Ambassador West, 1300 North State Parkway, Chicago, Illinois 60610. Telephone (312) 787-7900. The hearing will begin with the resolution of any procedural matters relating to the preceeding. The hearing will be presided over by an Administrative Law Judge who will have the power necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the power:

1. To regulate the course of the proceedings;

2. To dispose of procedural requests, objections and comparable matters;

3. To confine the presentation to the matters pertinent to the issues raised;

4. To regulate the conduct of those present at the hearing by appropriate means;

5. In the Judge's discretion, to question and permit questioning of any witness; and

6. In the Judge's discretion, to keep the record open for a reasonable time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The notice of proposed rulemaking will be reviewed in light of all testimony and written submissions received as part of the record, and the proposed standard will be modified or a determination will be made not to modify the proposed standard based on the entire record of the proceeding.

Authority

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Consititution Avenue, NW., Washington, DC 20210.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911, Secretary of Labor's Order No. 9-83 (48 FR 35736))

Signed at Washington, DC, this 15th day of November, 1985.

Patrick R. Tyson,

Acting Assistant Secretary of Labor

[FR Doc. 85-27653 Filed 11-21-85; 8:45 am]

BILLING CODE 4510-26-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket Nos. 84-689 and 84-690]

Allocating Spectrum for, and Establishing Other Rules and Policies Pertaining to, a Radiodetermination Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Consolidation of filing dates.

SUMMARY: The Federal Communications Commission has consolidated the filing dates for response pleadings to a Motion for Leave to File Supplementary Comments and Supplementary Comments filed by Omninet Corp. in the proceeding allocating spectrum for, and establishing other rules and policies pertaining to, a radiodetermination satellite service.

DATE: All pleadings due on or before November 20, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fern Jarmulnek, (202) 634-1682.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 2

Frequency allocation, Radio.

Order

In the matter of amendment of the Commission s Rules to Allocate Spectrum for, and to Establish other Rules and Policies Pertaining to, a Radiodetermination Satellite Service, Gen. Docket No. 84-689, RM-4426; and Policies and Procedures for the Licensing of Space and Earth Stations in the Radiodetermination Satellite Service, Gen. Docket No. 84-690.

Adopted November 14, 1985.

Released November 15, 1985.

(49 FR 36512, September 18, 1984)

By the Domestic Facilities Division.

1. McCaw Space Technology, Inc. (McCaw) has filed a "Motion for Consolidation of Filing Date" for responsive pleadings to the "Motion for Leave to File Supplementary Rulemaking Comments" and "Supplementary Rulemaking Comments" filed by Omninet Corporation on November 7, 1985. McCaw states that because copies of Omninet's filing were hand-delivered to radiodetermination satellite service applicants but mailed to all other parties, responsive pleadings are currently due on two separate dates. In the interest of administrative convenience, McCaw requests that the

filing dates be consolidated so that all responsive pleadings may be filed on the same date.

2. For good cause shown, the filing dates for pleadings responding to Omninet's Motion for Leave and Supplemental Comments will be consolidated, and all pleadings due on or before November 20, 1985.

Federal Communications Commission

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-27783 Filed 11-21-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-709; RM-4756; RM-4867]

TV Broadcast Station in Columbia and Natchitoches, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes two options for the assignment of VHF television Channel 11 to provide a first commercial television service to either Natchitoches or Columbia, Louisiana. UHF Channel 50 can be assigned to either community to satisfy the demand for new television service.

DATES: Comments must be filed on or before January 9, 1986, and reply comments on or before January 24, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

In the Matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations, [Columbia and Natchitoches,[1] Louisiana], MM Docket No. 84-709 RM-4756 RM-4867.

Further Notice of Proposed Rule Making and Order To Show Cause

Adopted: November 4, 1985.

Released: November 18, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 30541, published July 31, 1984, proposing the assignment of VHF Television Channel 11 to Columbia, Louisiana, in response to a petition filed by Larry G. Fuss, Sr. ("petitioner"). Comments in response to the *Notice* were filed by Arkansas Television Company ("ATC"), GACO Communications Corporation ("GACO"), and petitioner. A counterproposal[2] was filed by KTVE, Inc. ("KTVE") proposing the assignment of Channel 11 to Natchitoches, Louisiana. Reply comments supporting the assignment of Channel 11 to Natchitoches were filed by Karl F. Bailey, Jr. ("Bailey"), The Greater New Orleans Educational Television Foundation ("GNOETF"), KTVE, GACO and petitioner.[3] Opposition to the counterproposal was filed by KTBS, Inc. ("KTBS"). Late filed comments supporting the Channel 11 assignment of Columbia, Louisiana, were submitted by H. I. Schendle and oppositions thereto were filed by Louisiana Educational Television Authority ("LETA"), Bailey, KTVE, GACO and petitioner.

2. Initially, we note that petitioner has withdrawn its proposal to assign Channel 11 to Columbia[4] and now supports KTVE's proposal to assign Channel 11 to Natchitoches. A staff study has determined that Channel 11 can be assigned in compliance with the minimum distance separation requirements with a site restriction and appropriate offset changes to existing Channel 11 at Ft. Worth and Houston, Texas. The proposed offset changes, however, have not been given *Public Notice* before, and affected parties must be offered the opportunity to show cause why the offset changes should not be made. Thus, we are issuing this *Further Notice* to seek comments from all parties to the proposed allocation of Channel 11 to Natchitoches. In so doing, we have considered other expressions of interest in the Natchitoches assignment but have deferred consideration of oppositions thereto pending receipt of comments and replies to this *Further Notice*.

3. We also note a late filed expression of interest in the assignment of VHF Channel 11 to Columbia, and oppositions thereto. We take cognizance of this conflicting proposal and rather than requiring the filing of a formal counterproposal to this *Further Notice*, we shall propose to assign a television channel to Columbia herein. Staff engineering studies have determined that UHF television Channel 50 can be assigned to Columbia as a possible alternative to resolve this conflict. However, since it is Commission policy to assign channels to communities only upon demand, proponents should express their interest in a UHF channel in comments to this *Further Notice*.

4. All parties may, of course, submit additional information in their comments on the options listed below and where applicable, submit information on the comparative factors for each community including data on television signals received, coverages to be provided beyond the community of license, populations to be served and other relevant data. In order to comment on the comparative need for VHF television service in either community, the following information is provided for Natchitoches and Columbia.

5. Columbia, Louisiana (population 687)[5], the seat of Caldwell Parish (population 10,761) is located in northern Louisiana, approximately 180 kilometers (110 miles) west of Jackson, Mississippi. Columbia has no local television service. VHF Channel 11 can be assigned in compliance with the Commission's mileage separation requirements with a site restriction 9.6 miles southwest to avoid short spacing to Station KTHV, Channel 11[6] Little Rock, Arkansas, and Station KNHH (CP), Channel 11, Houma, Louisiana. UHF Channel 50+ can be assigned without a site restriction.

6. Natchitoches (population 16,664), seat of Natchitoches Parish (population 39,863) is located in northwestern Louisiana approximately 100 kilometers (65 miles) southwest of Shreveport, Louisiana. Natchitoches is assigned noncommercial, educational Channel *20 (vacant). The proposed allocation of Channel 11 would provide the first commercial television assignment to the

[1] This community has been added to the caption.

[2] The counterproposal (RM-4867) was placed on *Public Notice*, October 22, 1984, Report #1483.

[3] Petitioner filed an additional pleading on October 9, 1984 entitled *Request for Leave to File Late Comments and Additional Reply Comments* withdrawing its proposal to assign Channel 11 to Columbia, Louisiana, and supporting the assignment of Channel 11 to Natchitoches, Louisiana.

[4] See fn. 3, *supra*.

[5] All population figures are taken from the 1980 U.S. Census.

[6] Channel 11 in Little Rock, Arkansas, will be changed to "zero" offset when a license is awarded on Channel 11, Charleston, West Virginia, as authorized by the VHF drop-in proceeding.

community, VHF Channel 11 can be assigned in compliance with the minimum distance separation requirements with a site restriction 19.6 miles north to avoid short spacing to Station KHOU-TV, Channel 11, Houston, Texas and Station KNHH, Channel 11, Houma, Louisiana. As mentioned earlier, the proposed assignment of Channel 11 will also require offset changes at Station KTVT, Channel 11, Ft. Worth, Texas, from "minus" to "zero" and Station KHOU-TV, Channel 11, Houston, Texas, from "plus" to "minus". The ultimate permittee of Channel 11, Natchitoches, as a condition of the assignment to that community, will be required to reimburse the licensees of the above stations for reasonable expenses incurred as a result of the changes in offset. UHF Channel 50 can be assigned to Natchioches without a site restriction.

7. In view of the foregoing, we believe the public interest would be served by our soliciting further comments on the options listed below to amend the Television Table of Assignments, §73.606(b) of the Commission's Rules, with respect to the following communities:

City	Present	Proposed
Option I		
Columbia, LA		50+
Natchitoches, LA	*20+	11+ and *20+.
Ft. Worth, TX	5+, 11-, 21-, *31+, 52-	5+, 11, 21-, *31+, and 52-
Houston, TX	2-, *8-, 11+, 13-, *14, 17, 20, 26, 39-, and 61.	2-, *8-, 11-, 13-, *14, 17, 20, 26, 39-, 61.
Option II		
Columbia, LA		11+
Natchitoches, LA	*20+	*20+ and 50.

8. Accordingly, it is ordered, That pursuant to § 316(a) of the Communications Act of 1934, as amended, Gulf Television Corporation ("Gulf"), licensee of Station KHOU-TV, Houston, Texas, shall show cause why its license should not be modified to specify operation on Channel 11- proposed herein instead of the present Channel 11+.

9. Pursuant to § 1.87 of the Commission's Rules, Gulf may, not later than January 9, 1986, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, Gulf may, not later than January 24, 1986, file a written statement showing the particularity why its license should not be modified as proposed in the *Order To Show Cause*. In this case, the Commission may call upon Gulf to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an Order modifying the license as provided in the *Order To Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Gulf will be deemed to have consented to the modifications as proposed in the *Order To Show Cause* and a final Order will be issued by the Commission if the above-mentioned channel modifications are ultimately found to be in the public interest.

10. It is further ordered, That the Secretary shall send a copy of this *Notice of Proposed Rule Making and Order To Show Cause by* Certified Mail, Return Receipt Requested, to Gulf Television Corporation, Station KHOU-TV, P.O. Box 11, Houston, Texas 77001.

11. It is further ordered, That pursuant to section 316(a) of the Communications Act of 1934, as amended, Gaylord Broadcasting Company ("Gaylord"), licensee of Station KTVT(TV), Ft. Worth, Texas, shall show cause why its license should not be modified to specify operation on Channel 11, proposed herein, instead of the present Channel 11-.

12. Pursuant to § 1.87 of the Commission's Rules, Gaylord may, not later than January 9, 1986, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, Gaylord may, not later than January 24, 1986, file a written statement showing the particularity why its license should not be modified as proposed in the *Order To Show Cause*. In this case, the Commission may call upon Gaylord to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an Order modifying the license as provided in the *Order To Show Cause*, and a final Order will be issued by the Commission if the above-mentioned channel modifications are ultimately found to be in the public interest.

13. It is further ordered, That the Secretary shall send a copy of this *Notice of Proposed Rule Making and Order To Show Cause* by Certified Mail, Return Receipt Requested, to Gaylord Broadcasting Company, Station KTVT(TV), 4801 West Freeway, Fort Worth, Texas 76107.

14. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

15. Interested parties may file comments on or before January 9, 1986, and reply comments on or before January 24, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Larry G. Fuss, Sr., P.O. Box 3976, Jackson, Georgia 30233-0976 (Petitioner)

Julian Freret, Esq., Booth, Freret & Imlay, 1920 N Street NW.—Suite 520, Washington, DC 20036 (Counsel for GACO Communications Corporation)

Christopher J. Reynolds, Esq., Dempsey & Koplovitz, 1401 New York Avenue NW.—Suite 630, Washington, DC 20005 (Counsel for Arkansas Television Co.)

Robert A. Beizer, Esq., Schnader, Harrison, Segal & Lewis, 1111—19th Street NW., Suite 1000, Washington, DC 20036 (Counsel for KTVE, Inc.)

Lawrence M. Miller, Esq., Schwartz, Woods & Miller, 1325—18th Street NW., Suite 206, Washington, DC 20036 (Counsel for Greater New Orleans Educational Television Foundation)

Bruce A. Eisen, Esq., Shrinsky, Weitzman & Eisen, P.C., 1120 Connecticut Avenue, Washington, DC 20036 (Counsel for Karl F. Bailey, Jr.)

James P. Riley, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (Counsel for KTBS), Inc.)

B. Dwight Perry, Esq., Dow, Lohnes & Albertson, 1255 Twenty-Third Street NW., Washington, DC 20037 (Counsel for H.I. Schendle)

Robert A. Woods, Esq., Schwartz, Woods & Miller, 1325 18th Street NW., Suite 206, Washington, DC 20036 (Counsel for Louisiana Educational Television Authority)

16. It is further ordered, That the Secretary shall send a copy of this *Further Notice of Proposed Rule Making and Order to Show Cause* by Certified Mail, *Return Receipt Requested*, to:

Edgar F. Czarra, Jr. Esq., Covington & Burling, 1201 Pennsylvania Avenue NW., Washington, DC 20004 (Counsel for Gulf Television Corporation)

Peter D. O'Connell, Esq., Pierson, Ball & Dowd, 1000 Ring Building, 1200—18th Street NW., Washington, DC 20036 (Counsel for Gaylord Broadcasting Company)

17. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to

amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

18. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (203) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration, or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission s Rules, IT IS PROPOSED TO AMEND the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written coments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 85-27940 Filed 11-21-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket No. 85-349; FCC 85-607]

Carriage of Television Broadcast Signals by Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Inquiry and proposed rule making.

SUMMARY: This Notice requests comment and specific rule proposals regarding matters concerning mandatory carriage of television broadcast signals by cable television systems. This action is being taken in response to several rule making petitions and in light of the Court's finding that the Commission's rules concerning these matters were unconstitutional.

DATE: Comments are due December 30, 1985, and replies are due January 21, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Franca or Alan Stillwell, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable television.

Notice of Inquiry and Proposed rule Making

In the matter of amendment of Part 76 of the Commission's rules concerning carriage of television broadcast signals by cable television systems; MM Docket No. 85-349.[1]

Adopted: November 14, 1985.

Released: November 18, 1985.

By the Commission: Commissioner Quello concurring and issuing a statement.

Introduction

1. By this action, the Commission requests comment and specific rule proposals regarding matters concerning carriage of television broadcast signals by cable television systems.

Background

2. On July 19, 1985, the United States Court of Appeals held that the Commission's regulations requiring that cable television systems carry certain local television broadcast signals were unconstitutional.[2] The Court found that the Commission's "must carry" rules violate cable operators' rights under the First Amendment to the Constitution. In making that decision, however, the Court stated that it had "not found it necessary to decide whether any version of the mandatory carriage rules would contravene the First Amendment." [3] The Court further stated that "[s]hould the Commission wish to recraft the rules in a manner more sensitive to the First Amendment concerns . . . it is, of course, free to do so." [4]

[1] The issues left open in Dockets 21323, 81-741, and 64-160 (50 FR 11000 (1985)) relating to cable carriage of multi-channel television sound, program related teletext, and communications on the vertical blanking interval, will be addressed and considered herein, as appropriate.

[2] *See Quincy Cable TV Inc. v. FCC*, 768 F.2d 1434 (D.C. Cir. 1985).

[3] *Id.* at 1463.

[4] *Id.*

3. On October 4, 1985, the Commission received a request for rule making filed by the Association of Independent Television Stations, Inc. (INTV) and a joint request filed by the National Association of Broadcasters (NAB), *et al.*, concerning cable carriage of television broadcast signals.[5] In addition, on October 15, 1985, a proposal on this matter was filed by the Corporation for Public Broadcasting, the National Association of Public Television Stations and the Public Broadcasting Service (Public Broadcasters).[6] The proposals have been placed into the record of this proceeding and are available for review at the Commission's offices in Washington, D.C. (Room 239, 1919 M Street, Northwest).

4. In its request, INTV proposes the adoption of a specific rule based on section 111 of the Copyright Act, as follows:

> Cable television carriage of television broadcast signals is permissible, for purposes of section 111(c) of Title 17 of the United States Code, if the cable system carries, as part of the basic tier of cable service regularly provided to all subscribers at the minimum charge, the entire signals of all local television broadcast stations without discrimination or charge. A television broadcast station is "local" as to a cable system if the cable system lies within the "local service area" of the television station, as defined in 17 U.S.C. 111(f).[7]

INTV states that such a rule would not prohibit or require cable carriage of any television station and, therefore, believes that there would be no substantial First Amendment question raised by its proposal. INTV indicates that under its proposal the cable operator would either choose to invoke the compulsory license (and carry all local signals) or negotiate separately for the use of copyright material. In support of its proposal, INTV states that the "Commission has the power to define those broadcast signals which are 'permissable' for cable carriage under the compulsory licensing provisions of the [Copyright] Act." INTV believes that adoption of the above rule would achieve a balanced communications/copyright market.

5. The NAB does not offer a specific rule proposal but instead suggests various general areas for consideration. The NAB states that the court opinion "serves as a kind of traffic report on pitfalls to be avoided" for new rules. They suggest that "new rules would require on-channel carriage of local signals in their entirety, on the basic tier and without charge to the station, subject to specific guidelines provided by the Court decision." NAB indicates that under the Court's guidelines "the Commission must have an empirical, not merely intuitive, basis for rules." NAB believes that a Notice of Proposed Rule Making would yield facts upon which the Commission could rely on in this matter. Finally, the NAB states that the new rules could be drawn more narrowly and flexibly to accommodate the court's concerns and afford cable programmers greater access to cable systems. For example, some of the areas suggested by the NAB for consideration in any new rules include: varying cable channel capacity, duplicative broadcast signals and the definition of "local" station.

6. The Public Braodcasters, in their proposal, request that the Commission consider a rule requiring cable systems to carry on their basic tier all public television stations that provide Grade B service to the cable system's community. The petitioners believe that "without mandatory carriage rules, the ability of local public television stations to reach significant portions of the audiences" may be adversely affected and that this "will undermine Commission and Congressional policies designed to assure the . . . widespread availability of diverse, quality public television programming." The Public Braodcasters believe that such a rule proposal would meet the Court's constitutional test.

Discussion

7. The Commission is aware that the *Quincy* decision has caused considerable concern and uncertainty in both the broadcast and cable industries. Accordingly, we believe that it is appropriate and desirable to initiate both an inquiry and rule making concerning this subject. It also appears appropriate to examine the communications policy implications of cable's compulsory license in light of the *Quincy* decision.[8]

8. In undertaking this activity, however, we are aware that the Court has placed a heavy burden of justification on the Commission for any regulations that might impinge on rights protected by the First Amendment. In *Quincy*, the Court expressed doubt as to whether the Commission's must carry regulations should be treated as an incidental burden on speech and subject to the less stringent constitutional test announced by the Supreme Court in *United States v. O'Brien*, 391 U.S. 367, 377 (1968). Under this standard, the regulations would be valid only if they served a substantial governmental interest and were no more intrusive than necessary to serve that interest. Notwithstanding this fact, the Court found that the Commission's must carry rules did not meet the balancing test as an incidental burden on speech set out in *O'Brien*. In this regard the court stated:

> Although our review leaves us with serious doubts about the appropriateness of invoking *O'Brien's* interest-balancing formulation, we conclude that the rules so clearly fail under that standard that we need not resolve whether they warrant a more exacting level of First Amendment scrutiny.[9]

9. In light of this finding by the Court, we request comment on the proposals filed by INTV and the Public Broadcasters and the concerns raised by NAB.[10] In addition, we request parties to submit other specific proposals that they believe will meet the constitutional concerns raised by the court in *Quincy*. In this regard, we emphasize that such

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[5] The joint request for rule making was filed by the National Association of Broadcasters, Association of Maximum Service Telecasters, Station Representatives Association, American Broadcasting Companies, Inc., CBS Inc., National Broadcasting Company, Inc., ABC Affiliates Association, Spanish International Communications Corporation, Bahia de San Francisco Television Company, the Seven Hills Television Company, and National Religious Broadcasters.

[6] Henry Geller and Donna Lampert (Geller) filed a petition for rule making on September 5, 1985, concerning general matters related to this proceeding. In particular, Geller requests that the Commission take action "withdrawing the importation of distant signals in all large markets, leaving them available only in the smaller markets where their withdrawal would be disruptive." The petitioner believes that such action would correct the current imbalance in the market caused by the court's decision in *Quincy*. To the extent that this petition also raises matters that are relevant to the instant proceeding, we will consider them herein.

[7] INTV notes that section 111(f) of the Copyright Act states in pertinent part:

> The "local service area of a primary transmitter" in the case of a television broadcast station, comprises the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976. . . .

[8] A cable operator is permitted under compulsory copyright licensing to carry certain broadcast signals without having to negotiate with the individual broadcasters or program suppliers for copyright. *See* section 111(c) of the Copyright Act of 1976.

[9] *Quincy Cable TV, Inc. v. FCC*, 768 F. 2d at 1448.

[10] Sections 1.403 to 1.407 of the Commission's rules generally provide that petitions for rule making be placed on notice and comments sought as to the advisability of initiating a proceeding in response to the petitions. In view of the current uncertainty in the mass media industries and to ensure that this rule making is completed in timely manner, the Commission by this action is waiving the procedural aspects of its rules with regard to the filing of petitons for rule making and placing such petitions on public notice. Notice and opportunity for comment as to the substantive proposals advanced by these petitions are provided by this proceeding.

proposals should be carefully crafted to meet the constitutional strictures of the Court's decision in *Quincy*, and, at the same, proposals should provide clear justification on the basis of public interest need. Parties are also invited to submit any other information or studies on this matter which would enable the Commission to proceed directly to the adoption of an appropriate Report and Order in this matter. In particular, the Commission is interested in comments, proposals and data on the impact of these issues on the compulsory copyright licensing scheme and discussion on the Commission's authority in this area.

10. Regulatory issues relating to the cable television mandatory broadcast signal carriage rules have been pending in several related proceedings which we now believe are properly part of this proceeding. These include Docket 21472 [11] which relates to the matter of compliance with the mandatory signal carriage rules by cable systems with limited channel capacity and two rulemaking petitions, one filed September 27, 1984 requesting an inquiry into the continued justification of the Commission's must-carry rules and one filed August 29, 1980 by the Smaller Market UHF Television Station Group (RM-3745) seeking changes relating to the prohibition against cable system deleting, pursuant to the network nonduplication rules, programs from signals that are "significantly viewed" under the mandatory signal carriage rules. Because each of these proceedings, is directly related to the mandatory signal carriage rules that are under review in this proceeding each of these proceedings will be terminated in a separate order.

11. The Commission wishes to proceed in this matter as expeditiously as possible. Absent a sufficient showing, the Commission will not grant requests for extensions of time to file comments.

Regulatory Flexibility Act—Initial Analysis

12. *Reason for Action.* This action is being taken in light of the Court's recent decision in *Quincy* finding that the Commission's "must carry" rules are unconstitutional and must be vacated.

13. *The Objective.* By this action, the Commission is attempting to determine whether new cable signal carriage rules are needed and whether there is a need to examine cable's compulsory copyright license in light of the *Quincy* decision.

[11] 66 FCC 2d 710 (1977).

14. *Legal Basis.* The authority for this action is found in Sections 154 and 303 of the Communications Act of 1934, as amended.

15. *Description, potential impact on and number of small businesses affected.* The potential impact on and number of small business affected will be dependent on the rules adopted, if any. At this time, we can not assess accurately the potential impact of new rules. Any rules requiring carriage of television broadcast signals would impose a burden on cable operators. Nevertheless, we anticipate any such rules will have significantly less impact than our previous must carry requirements.

16. *Federal rules which overlap, duplicate, or conflict with this rule:* None.

17. *Any significant alternative minimizing the impact on small entities and consistent with the state objective:* None.

Procedural Matters

18. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirements or burden upon the public.

19. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised the *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communications (other than formal written comments/pleadings and normal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state docket number by the proceeding to which it relates. *See* generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

20. Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules, interested parties may file comments on or before december 30, 1985, and reply comments on or before January 21, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may consider information and ideas not contained in the comments provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

21. In accordance with the provisions of § 1.419 of the Commission's Rules and regulations, an original and 5 copies of all comments, replies, or other documents filed in this proceeding shall be furnished to the Commission. Participants filing the required copies who also wish each Commissioner to have a personal copy of the comments may file an additional 6 copies. Members of the general public who wish to express their interest by participating informally in the rule making proceeding may do so by submitting one copy of the comments, without regard to form, provided only that the Docket Number is specified in the heading. Responses will be available for public inspection during regular business hours in the Commission's Dockets Reference Room (Room 239) at its headquarters in Washington, D.C. (1919 M Street, Northwest).

22. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth above. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis.

23. The Secretary shall cause a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief, Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.*).

24. This Notice is issued pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

25. It is ordered, That the petitions for rule making filed by the Association of Independent Television Stations, the National Association of Broadcasters, *et al.*, the Corporation for Public Broadcasting, *et al.*, and Henry Geller and Donna Lampert are granted to the extent indicated herein.

26. For further information concerning this proceeding contact Bruce A. Franca, Policy Analysis Branch, Mass Media Bureau, (202) 632-6302.

Federal Communications Commission.

William J. Tricarico,

Secretary.

November 14, 1985.

Concurring Statement of FCC Commissioner James H. Quello

In Re: Amendment of Part 76 of the Commission's Rules Concerning Carriage of Television Broadcast Signals by Cable Television Systems

I fully support initiating this Notice of Inquiry and Notice of Proposed Rulemaking looking toward the establishment of mandatory carriage rules that meet the legitimate interests of all participants in the marketing of broadcast programming. I hope that commenters will focus on the constitutional issues raised by the court in *Quincy Cable TV, Inc. v. FCC (Quincy)*,[1] as well as describe reasonable solutions to the practical problems involved in imposing carriage obligations on cable systems.

I also wish to note my concern about consolidating into this docket the issues raised in three separate dockets involving mandatory carriage of TV stereo, teletext, and data transmission on the vertical blanking interval.[2] In my view, this is not a sound procedure. Only a short comment period has been provided here, and this new docket should focus on the crucial issue of what mandatory carriage rules would meet the concerns raised in *Quincy*. It would be unfortunate if the parties' comments are diffused by discussion of issues that are clearly peripheral to the legal questions raised in *Quincy*.

A wiser course of action would be to leave the other dockets open pending resolution of this NOI/NPRM. If the Commission chooses not to adopt any mandatory carriage rules, these other dockets could be dismissed as moot. And if mandatory carriage rules are adopted, these peripheral issues could then be addressed on their quite separate merits at that time. It is my hope that even with consolidation, this is the procedural approach that the Commission will adopt.

[FR Doc. 85-27941 Filed 11-21-85; 8:45 am]

BILLING CODE 6712-01-M

[1] 768 F.2d 1434 (D.C. Cir. 1985).

[2] Docket No. 21323; BC Docket No. 81-741; and MM Docket No. 84-168.

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47 CFR Part 76

[Docket No. 21472; RM-3745; FCC 85-608]

Cable Carriage of "Significantly Viewed" Television Signals

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order.

SUMMARY: This action terminates a pending rule making proceeding (42 FR 60180) and denies two outstanding petitions for rule making. The issues addressed in each of these matters concern the Commission's mandatory signal carriage rules for cable television systems. This action is being taken in light of the Court's recent finding that the Commission's rules concerning these matters were unconstitutional.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Franca or Alan Stillwell, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of subjects in 47 CFR Part 76

Cable television.

Memorandum Opinion and Order (Proceedings Terminated)

In the matter of Amendment of Part 76 of the Commission s rules and regulations (§§ 76.59-76.63) with respect to "Saturated" Cable Television Systems; amendment of Part 76 of the Commission s rules Concerning Cable Carriage of "Significantly Viewed" Television Signals; petition for inquiry into the circumstances justifying the Continuation or Deletion of 76.55, 76.57, 76.69 and 76.61 of the Commission s regulations; Docket No. 21472; Rm-3745.

Adopted: November 14, 1985.

Released: November 18, 1985.

By the Commission.

1. By this *Memorandum Opinion and Order*, the Commission is terminating a pending rule making proceeding and denying two petitions for rule making. The issues addressed in each of the these matters all relate to the Commission's mandatory signal carriage rules for cable systems.[1] These rules were recently ruled invalid by the United States Court of Appeals in *Quincy Cable TV, Inc. v. FCC*, 768 F. 2d 1434 (D.C Cir., 1985). The issues and current status of the above-captioned proceedings and petition are summarized below.[2]

2. On November 9, 1977, the Commission adopted a notice of proposed rule making in Docket No. 21472 (42 FR 60180). This proceeding concerns the matter of compliance with the mandatory signal carriage rules by "saturated" cable systems, i.e., cable systems that are required to carry more signals than their channel capacity can accommodate. In this notice, the Commission sought comments on several proposals regarding how best to prioritize the signal carriage requirements.

3. On August 29, 1980, the Smaller Market UHF Television Stations Group (SMU), an informal association representing 19 broadcast television station licensees, filed a Petition for Rule Making seeking deletion of several rules relating to the carriage by cable systems of television stations considered "significantly viewed." A "significantly viewed" signal is a broadcast television station that attains a specified level of over-the-air viewing in the cable community on the basis of an independent audience survey. The Commission initially established a list of those signals that were significantly viewed by county in 1972.[3] Other stations may demonstrate their significantly viewed status by submitting audience surveys to the Commission pursuant to § 76.54 of the rules.

4. On September 27, 1984, Gary L. Christensen filed a request for inquiry into the continued justification of the Commission's must carry rules. Subsequent to this request, Mr. Christensen submitted several supplementary filings in support of his request.

5. In view of the Court's recent decision in *Quincy*, we find that the issue of must carry compliance for saturated cable systems, the issue of signal carriage requirements for

[1] *See* 47 CFR 76.5 and 76.51-61.

[2] In a separate action today, the Commission is adopting a combine *Notice of Inquiry and Proposed Rule Making* in MM Docket No. 85-349, FCC 85-607, to consider cable "must carry" matters in view of the Court's decision in *Quincy*. We note that the issues left open in Dockets 21323, 81-741, and 84-168 [50 FR 11000 (1985)] concerning must carry status for multi-channel television sound, program related teletext and program related services on the vertical blanking interval will be addressed as part of the new proceeding.

[3] See Appendix B, *Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326 (1972).

significantly viewed signals, and the request for inquiry into the possible elimination of the must carry rules contained in the above-captioned proceedings and petitions are now moot. Furthermore, to the extent that these issues may be pertitent to any new rules that may be crafted by the Commission, we believe that these matters are best considered in the proceeding addressing the general issue of mandatory cable carriage of television broadcast signals.[4]

6. Accordingly, it is ordered that the proceeding in Docket No. 21472 (42 FR 60180) is terminated. Further, it is ordered that the Petition for Rule Making filed by the Smaller Market UHF Television Stations Group and the Petition for Inquiry filed by Gary L. Christensen are dismissed.

7. Authority for this action is provided in sections 154 and 303 of the Communications Act of 1934, as amended.

Federal Communications Commission,

William J. Tricarico,

Secretary.

[FR Doc. 85-27942 Filed 11-21-85; 8:45 am]

BILLING CODE 6712-01-M

[4] The issues in the proceedings terminated herein will be addressed as appropriate in the context of the new proceeding on must carry matters. *See* footnote 2, *supra*.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Ch. II

[Docket No. 51079-5179]

United States Standards for Grades of Breaded Catfish Products and Surimi-based Products, Request for Comments

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

ACTION: Request for comments.

SUMMARY: This notice requests comments on the desirability for and scope of two new voluntary U.S. Standards for grades of breaded catfish products and surimi-based products. Two industry organizations have petitioned this Agency for the development of such standards. This Agency is now requesting written comments from other industry members, users of these commodities, and the general public to evaluate the national level of interest in, and scope of these standards.

DATE: Written comments will be accepted until January 6, 1986.

FOR FURTHER INFORMATION CONTACT: Rita A. Creitz, National Standards Coordinator, National Fishery Products Program, Office of Utilization Research, National Marine Fisheries Service, Washington, D.C. 20235. Phone 202-634-7458.

SUPPLEMENTARY INFORMATION: This agency has received petitions under 5 U.S.C. 553(e) of the Administrative Procedure Act, from the Conagra Corporation, Tampa, Florida; and International Multifoods, Motley, Minnesota; requesting the development of U.S. Standards for grades of breaded catfish products and surimi-based products, respectively. The purpose of this notice is to invite written comments on these requests from other industry members, the users of these commodities, and the general public to evaluate the national level of interest and whether this Agency should proceed to develop such standards.

This agency currently has interim standards for seven market forms of catfish products: whole, dressed, whole fillets, trimmed fillets, steaks, fillet strips, and nuggets. It is anticipated that this interim standard will be finalized in early 1986. This Agency is asking two questions regarding the request:

1. Is there interest in a voluntary standard for breaded catfish products?

2. If so, should the standard pertain to all of the market forms identified in the current catfish standards?

This Agency is also asking two similar questions regarding standards for surimi-based products:

1. Is there interest in a voluntary standard for surimi-based products?

2. If so, to what specific surimi-based products should the standard apply? What quality criteria should be identified?

This Agency's decision regarding the development of these new standards will be stated in a follow-up **Federal Register** notice. Should the responses be in favor of such standards, the industry members as well as users of the commodity will be solicited to provide technical information about the products as part of the development process.

Dated: November 15, 1985.

J.W. Angelovic,

Assistant Administrator for Fisheries.

[FR Doc. 85-27906 Filed 11-21-85; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Parts 611, 672, and 675

[Docket No. 51180-5180]

Foreign Fishing, Groundfish and the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In FR Doc. 85-27101 beginning on page 47080 in the issue of Thursday, November 14, 1985, make the following corrections:

1. On page 47081, Table 1, the second column, the fourth figure should read "33,540", and the sixteenth figure should read "1,435".

2. On the same page, Table 1, in the first footnote, "§ 11.92" should read "§ 611.92", and in the fourth footnote, "234,000" should read "235,000".

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 50, No. 226
Friday, November 22, 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

Farmers Home Administration

Compliance With the Provisions of Pub. L. 99-88 Specifying Borrowers Shall Have the Option To Choose Between the Interest Rate in Effect at Loan Approval or at Loan Closing for Housing and Farm Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) is taking the necessary steps to fully comply with Pub. L. 99-88 so that borrowers in the affected loan programs have the opportunity to exercise their option under the law. FmHA District Directors and County Supervisors are being directed to review all rural housing and farmer program loans closed on or after November 12, 1983. In cases where there was a change to a lower interest rate between loan approval and loan closing, borrowers will be notified in writing that FmHA will rewrite their loans at the lower interest rate if the loan was not closed at that rate provided the borrowers so choose.

DATES: This option is effective for rural housing and farmer program loans closed on or after November 12, 1983. FmHA will notify all affected borrowers in writing. Borrowers will be given 30 days from the date of the notification to respond.

FOR FURTHER INFORMATION CONTACT: Ruth Corcoran, Senior Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5344, South Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 382-1488.

SUPPLEMENTARY INFORMATION: FmHA is in the process of amending its affected regulations for future compliance with Pub. L. 99-88. These amendments will be published in the near future.

This program/activity is listed in the Catalog of Federal Domestic Assistance under numbers: 10:404 Emergency Loans, 10.406 Farm Operating Loans, 10.407 Farm Ownership Loans, 10.410 Low Income Housing Loans (Section 502 Rural Housing Loans), 10.415 Rural Rental Housing Loans, and 10.416 Soil and Water Loans (SW Loans). For the reasons set forth in the Final rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, with the exception of 10.415 Rural Rental Housing Loans and 10.416 Soil and Water Loans (SW Loans), this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The program/activities listed in the Catalog of Federal Domestic Assistance under Nos. 10.415 and 10.416 are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

Dated: November 15, 1985.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 85-27884 Filed 11-21-85; 8:45 am]

BILLING CODE 3410-07-M

CIVIL RIGHTS COMMISSION

Arkansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:30 p.m., on December 12, 1985, at the University Conference Center, 5 Statehouse Plaza, Room 1D, Little Rock, Arkansas. The purpose of the meeting is to conduct a community forum on the status of desegregation in pulbic institutions of higher education in Arkansas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Acting Committee Chairperson, Alan Patteson, Jr., or J. Richard Avena, Director of the Southwestern Regional Office at (512) 229-5570 (TDD 512/229-5580). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., November 18, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-27907 Filed 11-21-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Defining Urbanized Areas Between Decennial Censuses

Introduction

On August 30, 1985, the **Federal Register** published Notice (50 FR 35279) of the Census Bureau proposal to designate urbanized areas between decennial censuses on the basis of local censuses conducted by this agency, usually at the request and expense of the local area. (See 15 CFR 50.10, Fee Structure for Special Population Censuses.) The period of comment for this proposal has passed and this Notice contains the Census Bureau's decision.

I have determined that the Census Bureau should designate urbanized areas between decennial censuses on the basis of local censuses conducted by this agency usually at the request and expense of the local area. No other government agency or nongovernmental organization provides this designation. This decision provides the opportunity for areas that meet the criteria to obtain the urbanized area designation in advance of the next decennial census.

The Census Bureau received one letter objecting to the proposal to designate urbanized areas between decennial censuses. We carefully considered the objections raised in the letter in relation to the general benefits. After review, I made the decision described above. The criteria for designating urbanized areas between 1980 and 1990 are consistent with those used for determining

urbanized areas based on results from the 1980 Decennial Census.

Definition

The Census Bureau will use the following criteria to determine the eligibility for definition of an urbanized area.

An urbanized area comprises an incorporated place [1] and adjacent densely settled surrounding area that together have a minimum population of 50,000 [2].

The densely settled surrounding area consists of:

1. Contiguous incorporated or census designated places having:

a. A population 2,500 or more; or,

b. A population of less than 2,500 but having either a population density of 1,000 persons per square mile, closely settled area containing a minimum of 50 percent of the population, or a cluster of at least 100 housing units.

2. Contiguous unincorporated area that is connected by road and has a population density of at least 1,000 persons per square mile.[3]

3. Other contiguous unincorporated area with a density of less than 1,000 persons per square mile, provided that it:

a. Eliminates an enclave of less than 5 square miles that is sorrounded by built-up area.

b. Closes an indentation in the boundary of the densely settled area that is no more than 1 mile across the open end and encompasses no more than 5 square miles.

c. Links an outlying area of qualifying density, provided that the outlying area is:

(1) Connected by road to, and is not more than 1½ miles from, the main body of the urbanized area; or is

(2) Separated from the main body of the urbanized area by water or other undevelopable area, is connected by road to the main body of the urbanized area, and is not more than 5 miles from the main body of the urbanized area.

4. Large concentrations of nonresidential urban area (such as parks, office areas, and major airports) that have at least one-quarter of their boundaries contiguous to the main body of the urbanized area.

Urbanized Area Titles

1. The Census Bureau will retain unchanged the titles of previously existing urbanized areas except for possible mergers and for those areas meeting titling criteria 4 and/or 5.

2. The Census Bureau will determine the titles of new urbanized areas qualifying as follows:

a. The title of the urbanized area always will include the name of the incorporated place with the largest population in the urbanzied area.

b. The title of the urbanized area may include the names of up to two additional incorporated places, with eligibility determined as follows:

(1) Those with a population of at least 250,000.

(2) Those with a population of 15,000 to 250,000 provided that they are at least one-third the population of the largest place in the urbanized area.

3. Area titles that include the names of more than one incorporated palce will start with the name of the largest and list the others in descending order of their population.

4. In addition to incorporated palce names, the titles contain the name of each state into which the urbanized area extends. The first named state is the state in which the largest central city is located, with additional states named in the order of population size within the urbanized area.

5. The Census Bureau may use regional titles to identify urbanized areas with populations over 1 million, in which case only the largest city of the urbanized area is included in the title.

Urbanized Area Central Cities

The central cities of urbanized areas are those named in the titles except where the urbanized area title is a regional title. In such cases, the central cities are those that qualify under items 1 or 2 of the titling criteria.

Dated: November 18, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85-27922 Filed 11-21-85; 8:45 am]

BILLING CODE 3510-07-M

[1] In Hawaii and Puerto Rico, incorporated places do not exist in the sense of functioning local governmental units. In Hawaii, the Census Bureau uses census designated places in defining a central place and for applying urbanized area criteria. In Puerto Rico, the Census Bureau uses zonas urbanas and aldeas.

[2] The Census Bureau excludes from the urbanized area the rural portions of extended cities, as defined in the Census Bureau's extended city criteria. In addition, for an urbanized area to be recognized, it must include a population of at least 25,000 that does not reside on a military base.

[3] The Census Bureau excludes the area of extensive nonresidential urban land uses, such as railroad yards, airports, factories, parks, golf courses, and cemeteries, in computing the population density.

International Trade Administration

[A-122-502]

Certain Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration/Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain heavy-walled rectangular welded carbon steel pipes and tubes (rectangular pipes and tubes) from Canada are being sold in the United States at less than fair value. The United States International Trade Commission (ITC) will determine within 75 days of publication of this notice whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: November 22, 1985.

FOR FURTHER INFORMATION CONTACT: William D. Kane, Office of Investigations, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-1766.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation and in accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), we have reached a final determination that rectangular pipes and tubes from Canada are being sold in the United States at less than fair value within the meaning of section 731 of the Act. The weighted-average margins are indicated in the "Suspension of Liquidation" section of this notice.

Case History

On March 25, 1985, we received a petition from the Committee on Pipe and Tube Imports on behalf of the domestic industry producing rectangular pipes and tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of rectangular pipes and tubes from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, as amended (the Act), and that these imports are materially injuring, or threatening material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient

grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on April 15, 1985 (50 FR 15771). On May 9, 1985, the ITC determined that there is a reasonable indication that imports of rectangular pipes and tubes from Canada are materially injuring a U.S. industry (50 FR 20302).

We presented an antidumping duty questionnaire to Titan Industrial Corporation (Titan), whose exports account for approximately 80 percent of the products under investigation, on May 10, 1985. Its response to our questionnaire was received on June 25, 1985. Additional voluntary responses were received from Welded Tube of Canada (Welded Tube) on June 25, July 10, and July 30, 1985, from Acier Royalcor Steel, Inc. (Royalcor) on July 2, 1985, and from Capco Tubular Products Co. (Capco) on July 27, 1985. The responses of Welded Tube were found to be untimely and inadequate for consideration. The response of Capco represented only one sale of the subject merchandise, which we considered to be too insignificant to warrant inclusion in our analysis. The response of Royalcor was included in our analysis.

On September 3, 1985, we preliminarily determined that rectangular pipes and tubes from Canada were not being, nor were likely to be, sold in the United States at less than fair value (50 FR 36910). Our notice of preliminary determination provided interested parties an opportunity to submit views orally and in writing.

Verifications were conducted at Titan's New York corporate offices and the offices of their Canadian subsidiary, Dominion Steel Export Company (Dominion) in Canada, on September 9 through September 13, 1985. Verification was conducted at Royalcor in Montreal, Canada during the week of September 30, 1985.

On October 11, 1985, we held a public hearing.

Scope of Investigation

The products covered by this investigation are certain welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness not less than 0.156 inches, not threaded and not otherwise advanced, other than pipe conforming to American Petroleum Institute specifications for oil well casing, currently provided for in item 610.3955 of the *Tariff Schedules of the United States, Annotated.*

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold prior to the date of importation to unrelated purchasers in the United States. We calculated the purchase price based on the ex-factory or C and F, duty paid, delivered, packed price. We made deductions, where appropriate, for U.S. inland freight, foreign inland freight, U.S. brokerage charges, foreign brokerage charges, and U.S. customs duty.

For Royalcor a number of keypunching errors resulting in double entries of line items in the computer sales listing were discovered. These repetitions were deleted for our final calculations. The system used to allocate brokerage charges was found to be based on a random sampling of freight bills and an estimate of invoice product mix. This allocation method was determined to be less reliable than an allocation of total brokerage charges over total tonnage shipped during the period, and the latter method was adopted for our final calculations. U.S. customs duty was calculated on a price which included non-dutiable charges. For our final calculations non-dutiable charges were deducted prior to calculating the duty. For Titan two incorrect freight charges, resulting from a clerical error and a computation error, were corrected for our final calculations. Two sales of rejects were found to be erroneously included in the listing of sales, and were deleted.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value for Titan based on constructed value, as there were insufficient sales in the home market or to third countries to provide viable comparisons. For Royalcor, we calculated foreign market value based on home market ex-factory, packed prices to unrelated purchasers.

For Royalcor packing costs are incorporated in their acquisition cost of the subject merchandise, and appear to be identical for both markets. No claims were made for differences in circumstance of sale. However, we could not verify Royalcor's claim that credit terms are the same in both markets. Therefore, based on our sample of sales in each market, we have calculated the number of days for which credit was extended in the respective markets, and have made an adjustment to foreign market value to reflect that difference. We made comparisons of such or similar merchandise based on grade, dimension, wall thickness, and whether or not cut to length, as selected by Commerce Department industry experts.

To determine foreign market value of Titan, we calculated constructed value by totaling the costs of materials used in producing such or similar merchandise, fabrication, general expenses, profit and the cost of packing on U.S. shipments. We used the actual amount of general expenses, as this was greater than the statutory minimum of 10 percent of the cost of materials and fabrication. The amount added for profit was the statutory minimum of eight percent of the sum of materials, fabrication costs, and general expenses, since the actual level of profit was less than eight percent. We made circumstance of sale adjustments, where appropriate, for after sale warehousing expenses incurred on United States sales, in accordance with § 353.15 of the Commerce regulations.

In calculations for our preliminary determination we included pre-sale warehousing charges as part of fabrication costs. For our final determination we have concluded that these costs are more properly costs associated with the sale of the merchandise and have included them in selling, general and administrative expenses. Those costs associated with cutting pipes to length in the warehouse have been segregated, and continue to be included in costs of fabrication.

In our preliminary determination we included a conversion contract penalty payment in costs of fabrication, allocating this cost based on production figures available at the time. We continue to treat this penalty payment as a cost of fabrication. However, our basis of allocation is the yearly production data developed at verification.

For our preliminary determination we used constructed values based on Titan's entire fiscal year 1984. However, for our final calculations we find it more appropriate to use those costs associated with merchandise sold during the period of investigation in construction a value, in accordance with § 353.6 of the Commerce Regulations.

At the time of verification a detailed reconciliation of reported costs to audited financial statements was made. The variance between the cost of

production data verified and the cost of manufacture reflected in the financial statements was found to be reasonable given the product mix of merchandise included in the financial statements and the different purposes for which the two sets of data were prepared.

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making this determination. We were granted access to the books and records of the companies involved. We used standard verification procedures, including examination of accounting records, financial statements and selected documents containing relevant information.

Petitioner's Comments

Comment 1

The petitioner claims that the verification report did not disclose that the cost of production information had been reconciled with the audited financial statements.

DOC Position

The cost of production had been reconciled to the financial statements by the respondent. As is its usual practice, under similar conditions, the Department reviewed in detail this reconciliation and disclosed this procedure in its verification report.

Comment 2

The verification report did not disclose whether freight costs for shipment of narrow coil between Titan's third party coil supplier and the converter had been reviewed.

DOC Position

The freight costs for shipment of narrow coil between Titan's third party coil supplier and the converter were included in the raw material costs, and were reviewed at the time the raw materials amounts were tested.

Comment 3

Titan did not increase the constructed value by the amount of the flash removal charge for each sale which included this extra.

DOC Position

The respondent did include the flash removal charge for each sale which included this extra.

Comment 4

The respondent's methodology for calculating conversion scrap loss and the weight savings rate (difference between theoretical and actual weights) produces results which do not comport with United States industry experience and are patently unreasonable. Given the information contained in the respondent's Daily Rolling Reports, a much more accurate indication of the scrap loss could be made by an alternative method which also eliminates the need for the "weight savings rate" step.

DOC Position

The Department agrees with the petitioner that the two step scrap loss and weight savings rate method is unnecessary because these two steps could have been combined in one calculation. However, we reconciled the differences between the petitioner's and respondent's methods and found that the results would have been identical, if the respondent and petitioner had both used the weighted average scrap loss for the total product line and if the petitioner had accounted for the revenues resulting from the sale of "rejects". The Department used the respondent's method for determining the scrap loss.

Comment 5

In the preliminary determination, the Department used the constructed value based on cost incurred for fiscal year 1984. The Department should use a more appropriate period which covers only the costs associated with products sold during the period of investigation.

DOC Position

The Department agrees. For the final determination the Department has followed its usual practice under similar conditions, and used the costs incurred for the sales of the product during the period of investigation.

Comment 6

Under a long-term contract with a third party converter of tube Titan may receive a rebate if orders exceed a specific amount. Titan should not include as an offset to cost, the incremental allowance rebate which it received based on production which was not sold during the period of investigation.

DOC Position

Since the incremental rebate was not received as part of the cost of production used for the determination, the Department did not include these rebates.

Comment 7

Under a long term comtract with a third party convertor of tube, Titan is required to pay a penalty if it does not order a specified amount of fabrication work each year. The 1984 penalty payment from Dominion to the third party convertor should be included in cost of production as part of the cost of manufacture, and not as a selling expense.

DOC Position

The Department agrees. The actual penalty payment which is directly related to the production of the product under investigation in 1984 was included. The penalty payment was included in the "cost of manufacture" instead of "selling expenses" since it is a term of the conversion contract between Dominion and the third party convertor.

Comment 8

Pre-sale warehousing expenses were properly considered to be a cost of fabrication rather than a general expense by the ITA in the preliminary determination.

DOC Position

The Department does not agree. Dominion's warehouse in Canada is a depot from which the products under investigation are shipped directly to customers in the United States. These expenses were included in general expenses. The warehouse is not a manufacturing facility. The part of the warehousing which was used for fabrication was identified and included in the cost of manufacturing.

Comment 9

Petitioners claim that two errors found in Titan's freight charges at verification require alternatively that either a reverification of these charges be conducted using a larger universe of sales, or that the margins of error found in the two sales be applied proportionately to the entire U.S. sales listing.

DOC Position

We have determined that the error rate represented by these two sales in relationship to the total of items of data checked at verification was not greater than would reasonably be expected, and that the causes of the errors were not of a methodological or other nature which could cause a repetitive effect throughout the listing of sales. One such cause was a clerical transposition of weight numbers which resulted in a very minor change in the freight figure. The second was engendered by a misrepresentation of individual truck weights and their totals on billing slips submitted to Titan by their freight forwarder and used as source

documents for their calculations. The errors found were corrected for our final calculations. In these circumstances we consider the error rate acceptable, and the verification of these charges adequate.

Respondents Comments

Comment 1

In the preliminary determination, the ITA included pre-sale warehousing expenses in cost of manufacturing. Titan's warehousing expenses are selling expenses and should be included in cost of production as a selling, general and administrative expense.

DOC Position

The Department agrees. See the response to the petitioner's comment number 8 regarding warehousing expense.

Comment 2

The 1984 penalty payment from Dominion to the third party convertor should not be included in cost of production since the penalty payment had no effect on Dominion's income during the period of investigation. If the ITA does include the penalty payment in cost of production, it should be considered as part of SG&A since it is in no way related to the cost of producing the products covered by the investigation.

DOC Position

The Department disagrees. See the response to the petitioner's comment number 7 regarding the penalty payment.

Comment 3

At verification, it became apparent that certain interest income amounts from unrelated parties were not included in reported SG&A. These amounts should be included as an offset to SG&A expenses.

DOC Position

The Department disagrees. Interest income which did not result from production or sales of the products under investigation is not applied to offset the cost of production, because it is not related to those products. Interest income had not been included in the submission nor was the source of such income identified. Therefore, the Department did not offset the costs.

Comment 4

Dominion correctly reported all costs of manufacture in the original currency, Canadian dollars. The Canadian to United States dollar exchange rate conversion required by United States generally accepted accounting principles (FASB-52) is not relevant in this case.

DOC Position

The Department agrees. The Department converted the "constructed value" in accordance with its regulations. Therefore the method prescribed by FASB #52 is not relevant.

Suspension of Liquidation

We made fair value comparisions on all reported rectangular pipes and tubes sold in the United States by the two Canadian companies during the investigative period. With regard to Royalcor we found its weighted-average margin to be 0.15 percent. As this is *de minimis*, we are excluding Royalcor from this determination. The weighted-average margin for Titan and all other producers is 0.65 percent.

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of rectangular pipes and tubes from Canada, with the exception of those produced by Acier Royalcor Steel, Inc., which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service will require the posting of a cash deposit, bond, or other security in amounts based on the following weighted-average margins.

Company	Weighted-average margin
Titan Industrial Corp. (Dominion Steel Export Company)	0.65 percent
Acier Royalcor Steel, Inc	0.15 percent (de minimis) (excluded).
All others	0.65 percent

ITC Notification

We are notifying the ITC and making available to it all nonprivileged and nonconfidential information relating to this determination. We will allow the ITC access to access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC determines that such injury does exist, we will issue an antidumping order directing Customs officers to assess an antidumping duty on certain heavy-walled rectangular welded carbon steel pipes and tubes from Canada entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d (d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

November 18, 1985.

[FR Doc. 85-27948 Filed 11-21-85; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles; University of Mexico et al.

Correction

In FR Doc. 85-27214 appearing on page 47243 in the issue of Friday, November 15, 1985, make the following correction:

In the second column, in the third line of the fifth paragraph, "Instrument: Spectrometer" should read "Instrument: NMR Spectrometer".

BILLING CODE 1505-01-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and its Administrative Subcommittee will convene separate public meetings at the Hotel Villa Parquera, La Parquera, Lajas, Puerto Rico. At its 55th regular meeting (December 11, 1985, from 9 a.m. to 5 p.m.; reconvening December 12, from 9 a.m. to 3 p.m.), the Council will consider fishery management plans under development and discuss other related matters. On December 12, the Council will meet jointly with the Directors of the National Marine Fisheries Service's Research Centers to address issues related to research and data needs. On December 10, from 2 p.m. to 5 p.m., the Council's Administrative Subcommittee will discuss issues related to its regular administrative Subcommittee will discuss issues related to its regular administrative operations. For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey,

Puerto Rico 00918; telephone: (809) 753–4926.

Dated: November 19, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, F/MI, National Marine Fisheries Service.

[FR Doc. 85–27936 Filed 11–21–85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Limits for Certain Cotton and Man-Made Fiber Textile Produced Products or Manufactured in the People's Republic of China

November 13, 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 November 25, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On September 20, 1985, a notice was published in the **Federal Register** (50 FR 38152), which announced import restraint limits of 106,461 pounds for man-made fiber threads in Category 605pt. (only T.S.U.S.A. number 310.9500) and 106,455 dozen for man-made fiber pajamas in Category 651, among others, produced or manufactured in China and exported during the ninety-day period which began on August 15, 1985 and extended through November 12, 1985. The notice also stated that the Government of the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, if no mutually satisfactory solution is reached on a level for these categories during consultations, to limit its exports during the twelve-month period immediately following the ninety-day consultation period to 248,117 pounds and 324,449 dozen, respectively.

No solution has been reached in consultations on mutually satisfactory limits for these categories. The United States has decided, therefore, to control imports exported during the twelve-month period beginning on November 13, 1985 at the levels described above. The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

In the event the limits established for the ninety-day period have been exceeded, such excess amounts, if allowed to enter, will be charged to the levels established for the designated twelve-month period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 25, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 605pt.[1] and 651, produced or manufactured in the People's Republic of China, and exported during twelve-month period beginning on November 13, 1985 and extending through November 12, 1986, in excess of the following levels:

Category	12-month restraint level [2]
605pt. [1]	248,117 pounds.
651	324,449 dozen.

[1] In Category 605, only T.S.U.S.A. number 310.9500.
[2] The levels have not been adjusted to reflect any imports exported after August 14, 1985.

Textile products in Categories 605pt.[1] and 651 which are in excess of the ninety-day limits established in the directive of September 17, 1984, shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.A. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–27919 Filed 11–21–85; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 605, only T.S.U.S.A. number 310.9500.

Adjusting the Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea; Correction

November 19, 1985.

On November 7, 1985 a notice was published in the **Federal Register** (50 FR 46331) which announced adjustments in restraint limits for specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985. The sentence beginning on line 17 of column one of the notice document should be corrected to include reference to the following category in proper number sequence:

640pt. (all T.S.U.S.A. numbers in the category except 381.3130, 381.3370, 381.3558, 381.6972, 381.8666, 381.9535, 381.9540, 381.9660, and 381.968).

In the letter to the Commissioner of Customs which followed that notice the following categories and limits should be added/corrected in proper number sequence:

612	99,025,494 square yards.
613	23,891,674 square yards.

Footnotes 5 and 6 of the letter should be corrected to read as follows:

[5] In Category 640, all T.S.U.S.A. numbers in the category except 381.3130, 381.3370, 381.3558, 381.6972, 381.666, 381.9535, 381.9540, 381.9660, and 381.9968.

[6] In Category 640, only those T.S.U.S.A. numbers listed in footnote 5 above.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-27917 Filed 11-21-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting the Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Macau; Correction

November 19, 1985.

On November 19, 1985 a notice was published in the **Federal Register** (50 FR 47575) which increased the restraint limits for Categories 341, 351, 445/446 and 641, produced or manufactured in Macau and exported during the period which began on January 1, 1985 and extends through December 31, 1985. All reference to Category 351 should be deleted from the notice document and the letter to the Commissioner of Customs which followed that notice.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

[FR Doc. 85-27918 Filed 11-21-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting Import Limits for Certain Cotton Textile Products Produced or Manufactured in Mexico

November 18, 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 November 18, 1985. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

A CITA directive dated December 21, 1984 (49 FR 50230) established limits for certain specified categories of cotton, wool and man-made fiber textile products, including Categories 338/339, 347/348, 359pt. 633, 641 and 647/648, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1985. The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, under the terms of which these limits were established, also includes provision for the carryover of shortfalls from the previous agreement year in certain categories (carryover) and for percentage increases in certain designated categories (swing). Under the foregoing provisions of the bilateral agreement and at the request of the Government of Mexico, the limits established for the aforementioned categories are being increased for swing and carryover, as available, for goods exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), Apil 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

November 18, 1985

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1985 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during 1985.[1]

Effective on November 18, 1985, paragraph 1 of the directive of December 21, 1984 is hereby further amended to include the following adjusted restraint limits:

Category	Adjusted 12-month restraint limit [2]
338/339	651,776 dozen.
347/348	1,090,122 dozen of which not more than 673,183 dozen shall be in Category 347 and not more than 662,177 dozen shall be in Category 348.
359 pt. [3]	1,030,410 pounds.
633	83,161 dozen.
641	459,672 dozen.
647/648	1,750,216 dozen of which not more than 1,050,129 dozen shall be in Category 647 and not more than 1,050,129 dozen shall be in Category 648.

[2] The limit has not been adjusted to reflect any imports exported after December 31, 1984.

[3] In Category 359, all T.S.U.S.A. numbers except 384.5299.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-27876 Filed 11-21-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of February 26, 1979, as amended, and extended, provides, in part, that: (1) Specific limits and sublimits may be exceeded by not more than seven percent for swing in any agreement period; (2) these same limits may be adjusted for carryforward and carryover up to 11 percent of the applicable category limit or sublimit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplement Part 17 and Related Clauses in Part 52.217

Not including 17.71 master agreements for alteration and repair of vessels or matters covered by other clearances (17.74).

Information concerns certain data required by sec. 1231 of Pub. L. 98-525.

Reporting is necessary to provide to contracting officers information that will be used to identify sources for participation in competitive acquisitions.

Businesses or others for profit/small businesses or organizations.

Responses: 3,812,600.

Burden hours: 1,603,490.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Owen Green, (DASD) (P–DARS), c/o OUSDRE(M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 19, 1985.

[FR Doc. 85–27895 Filed 11–21–85; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Independent Research and Development Data Sheet

This form is used to gather and report summary information on each project to maintain the IR&D database. The database is used by DoD scientists and managers to identify advanced R&D efforts and technologies initiated by US industry. The information is used in R&D planning both to avoid duplication R&D effort already performed by industry and to identify areas of high technology expertise.

DoD Commercial Contractors.

Responses 8,000.

Burden hours 10,032.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. John L. Carney, DTIC–HDR, Room 5B405, Defense Technical Information Center, Cameron Station, Alexandria, VA 22304–6145 telephone number (202) 274–7206.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 19, 1985.

[FR Doc. 85–27896 Filed 11–21–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

National Board for the Promotion of Rifle Practice; Meeting Correction

ACTION: Correction.

This document corrects a notice announcing an open meeting of the National Board for the Promotion of Rifle Practice that appeared at page 46332 in the **Federal Register** of Thursday, November, 7, 1985, (50 FR 46332). The action is necessary to correct administrative omissions.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting.

Name of Committee: National Board for the Promotion of Rifle Practice.

Date of Meeting: 5 December, 1985.

Place: Quality Inn, Pentagon City, 300 Army/Navy Drive, Arlington, Virginia 22202.

Time: 1330–1630.

Proposed Agenda

1. Open prayer and Pledge of Allegiance to the flag.
2. Federal Register notice of meeting.
3. Roll call and introduction of new members.
4. Approval of Minutes of 22 June, 1984.
5. Reports:
   a. Executive committee report.
   b. Budget committee report.
6. Unfinished Business:
   A. Handout of proposed change to Title 10.
   b. Issue of cal. M1 carbines to senior clubs with junior divisions.
   c. Enhanced public affairs support for the Director of Civilian Marksmanship.
   d. National Match Support Detachment: Status of transfer of functions to AMC.
   e. Automatic target systems—Status.
7. New Business:
   a. Revision of AR 920–20.
   b. Report on Camp Perry 1985.
   c. Introduction of 9mm provisions in AR 920–30.
   d. Projected "run-out" of cal. 30 ball ammunition.
   e. Request of "other—services" supplies of cal. 30 ball ammunition.
   f. Possible use of M852, 7.62mm ammunition for EIC matches.
   g. Future use of surplus M1911A1, .45 cal. auto pistols.
   h. Authorizations of "accurizing techniques" to the M16 rifle.
   i. Write-in issues received by the ODCM.
8. Closing prayer.

The meeting is open to the public. Persons desiring to attend the meeting should contact the Office of the Director of Civilian Marksmanship (202) 272–0180 prior to 5 December, 1985, to arrange admission.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85–27860 Filed 11–21–85; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Council on Educational Research; Meeting

AGENCY: National Council on Educational Research, Ed.

ACTION: Full Council Meeting of the National Council on Educational Research.

Matters to be Discussed: Reports from various committees, presentations from officials of the Department of Education, and other individuals outside of the Department regarding topics of interest to the Council.

DATE: December 5th and 6th, 1985.

ADDRESS: U.S. Department of Education, Secretary's Conference Room 400 Maryland Avenue, SW, Room 4003–FOB–6, Washington, DC.

STATUS: Open.

TIME: Thursday, December 5, 1985 1:00–5:00 p.m. Friday, December 6, 1985 9:00 a.m.–5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Patricia Hines, National Council on Educational Research, 2000 L Street, NW., Suite 617–B, Washington, DC 20036, 202–254–7490.

SUPPLEMENTARY INFORMATION: The National Council on Educational Research is established under section 405 of the General Education Provisions Act.

The meetings of the Council are open to the public, unless otherwise stated.

Dated: November 18, 1985.

Patricia Hines,

Authorizing Official, National Council on Educational Research.

[FR Doc. 85-27867 Filed 11-21-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 85-29-NG]

Petro-Canada Hydrocarbons Inc.; Application to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 5, 1985, of an application filed by Petro-Canada Hydrocarbons Inc. (PCH), a wholly-owned subsidiary of Petro-Canada Inc. (PCI), for blanket authorization to import from Canada up to 150 Bcf of natural gas over a two-year period beginning on the date of first delivery. The gas would be supplied by PCI or such other supply sources as may become available and sold by PCH on a short-term or spot basis to local gas distribution companies, natural gas pipelines, and direct sale customers in California, the Pacific Northwest, the Middle West, and other areas in the U.S. as market opportunities develop. PCH may also act as an agent for PCI. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. PCH proposes to make quarterly reports to the ERA.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on December 23, 1985.

FOR FURTHER INFORMATION CONTACT:

R.T. Gehring, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-098, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9482

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: On November 5, 1985, PCH filed an application for blanket authorization to import up to 150 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. PCH will import and resell the gas to various potential customers including local distribution companies, natural gas pipelines, and direct sale customers in California, the Pacific Northwest, the Middle West, and other areas in the U.S. as market opportunities develop. PCH also may act as agent for PCI.

PCH asserts that no new pipeline facilities will be required in order to import the gas. According to PCH, approval and implementation of this gas import application will have a positive impact on the environment in instances where the gas is used to displace alternate fuels.

In support of its application, PCH asserts that the specific terms of each of its supply contracts will be responsive to competitive market forces in the United States domestic gas market and will be consistent with PCH's own contractual arrangements with its U.S. purchasers. Similarly, the terms, including price, for each spot sale will be freely negotiated between PCH and its U.S. purchasers. PCH asserts that this will ensure the market competitiveness of each import arrangement. For the reasons stated above, PCH asserts that the proposed import is not inconsistent with the public interest.

This application is one of a number received by the ERA concerning purchases of imported gas for spot and short-term blanket opportunities. The authorization would provide the applicant with blanket import approval to negotiate and transact individual short-term sales arrangements without further regulatory action. This application is similar to other blanket imports the ERA has recently approved.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of an import policy arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). The objective of this policy, with it strong emphasis on competitive arrangements and contract flexibility, is to free commercial parties from undue government interference in determining contract terms and reflects the importance of buyer-seller negotiation. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application wil not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., December 23, 1985.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an

oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PCH's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 15, 1985.

Robert L. Davies,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-27903 Filed 11-21-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-07; OFP Case No. 64012-9295-21-24]

Powerplant and Industrial Fuel Use; Exemption Request; Klondike Equity Enterprises, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Klondike Equity Enterprises, Inc.

SUMMARY: On October 4, 1985, Klondike Equity Enterprises, Inc. (KEE), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at its Klondike II facility in San Diego County, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is an approximately 27.6 MW (net) cogeneration facility consisting of a gas turbine and generator, a heat recovery steam generator, a steam turbine and generator, an absorption refrigeration package, and ancillary equipment.

The plant will be constructed at a facility consisting of two ice rinks, a healthclub, swimming pool, and restaurant. The plant will burn natural gas. It is expected that more than 50 percent of the net annual electric power produced by KEE will be sold to San Diego Gas and Electric, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will also produce thermal energy for an absorption refrigeration system, water heating, and comfort heating system at the adjoining recreational complex.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before January 6, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA-C&E-86-07 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-9506

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947

SUPPLEMENTARY INFORMATION: KEE proposes to construct and operate a cogeneration facility in San Diego County, California, which will: (1) Generate electrical power for sale to San Diego Gas and Electric and (2) produce steam to meet the requirements of the adjoining recreational complex. The system will consist of a gas turbine, a heat recovery steam generator, a steam turbine generator, an absorption refrigeration package, and ancillary equipment.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), KEE has certified to ERA that:

1. The gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), KEE has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that KEE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on November 15, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-27965 Filed 11-21-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI86-52-000]

Pogo Producing Co.; Expedited Producer Abandonment Application and Application for Producer Sales Certificate

November 15, 1985.

On November 8, 1985, Pogo Producing Company (Pogo) filed in the above-referenced docket an Application for Producer Abandonment of Section 7, (c) Certificate Obligations and for Blanket Section 7(c) Producer Sales Authority. Pogo has requested expedited consideration pursuant to 18 CFR 2.77(b). Pogo requests authority to abandon sales to Tennessee Gas Pipeline Company (Tennessee) made pursuant to a Gas Purchase Agreement dated February 5, 1960. Said contract covers certain reservoirs underlying numerous leases in the Lopeno Field, Zapata County, Texas. Pogo indicates that there are four producing wells covered by the contract and that Pogo has made applications for NGPA section 102(c) and/or 103 determinations for the four wells.

Pogo states that the contract expired on December 31, 1980 and no rollover contract has been executed by Pogo since its acquisition of its interests on December 15, 1983. Pogo also states that Tennessee is not presently, nor for the foreseeable future, in a position to purchase any gas Pogo may have available for sale to them.

Pogo states that it seeks abandonment and any necessary section 7(c) certificate to resell the gas in either the long-term or short-term market.

The circumstances presented in the application appear to meet the criteria for consideration on an expedited basis, purusant to § 2.77 of the Commission's rules as promulgated by Order No. 436, issued October 9, 1985, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

In accordance with the provisions of § 2.77 of the Commission's rules, we shall provide for a notice period not to exceed 15 days. Accordingly, any person desiring to be heard or to make any protests with reference to said application should on or before November 27, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protects 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

FR Doc. 85-27846 Filed 11-21-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-123-000, et al.]

Connecticut Light and Power Co., et al.; Electric rate and corporate regulation filings

Take notice that the following filings have been made with the Commission:

1. Connecticut Light and Power Company

[Docket No. ER86-123-000]

November 15, 1985.

Take notice that on November 1, 1985 Connecticut Light and Power Company tendered for filing for itself and as successor by merger with the Hartford Electric Light Company (HELCO) and on behalf of Western Masachusetts Electric Company (WMECO) Notices of Termination of the following rate schedules:

CL&P's Rate Schedule FPC No. 122
CL&P's Rate Schedule FPC No. 121
CL&P's Rate Schedule FPC No. 128
CL&P's Rate Schedule FPC No. 201

Comment date: November 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Indiana & Michigan Electric Company

[Docket No. ER84-591-002]

November 15, 1985.

Take notice that on November 7, 1985 Indiana and Michigan Electric Company tendered for filing a compliance report of refunds made pursuant to Commission letter order dated October 10, 1985.

Comment date: November 27, 1985, in accordance with Standard Paragraph H at the end of this notice.

3. Commonwealth Electric Company, Boston Edison Company, Montaup Electric Company

[Docket No. ER86-130-000]

November 14, 1985.

Take notice that on November 1, 1985, Commonwealth Electric Company ("Commonwealth") tendered for filing on behalf of itself, Montaup Electric Company, and Boston Edison Company supplemental data pertaining to their applicable gross investments, combined Federal income and franchise tax rates, and local tax rates for the twelve-month period ending December 31, 1984. Commonwealth states that this supplemental data is submitted pursuant to a letter order of the Federal Power Commission in Docket No. E-7981 dated April 26, 1973 accepting for filing Commonwealth's Rate Schedule FERC No. 21, Boston Edison Company's Rate Schedule FERC No. 67, and Montaup Electric Company's Rate Schedule No. 27.

Commonwealth states that these rate schedules have previously been similarly supplemented for the calendar years 1972 through 1983.

Copies of said filing have been served upon Boston Edison Company, Montaup Electric Company, Northeast Utilities and the Massachusetts Department of Public Utilities.

Comment date: November 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Indiana & Michigan Electric Company

[Docket No. ER86-128-000]

November 14, 1985.

Take notice that American Electric Power Service Corporation (AEP) on November 1, 1985 tendered for filing on behalf of its affiliates Indiana & Michigan Electric Company (I&ME) Modification No. 17 dated September 1, 1985 to the Interconnection Agreement dated June 1, 1968 between the Central Illinois Public Service Company (CIPS) and I&ME. The Commission has previously designated the 1968 Agreement as I&ME's Rate Schedule FERC No. 67 and CIPS' Rate Schedule FERC No. 62.

Modification No. 17 increased the transmission demand rate for Emergency Energy to 2.75 mills per kilowatthour. In addition, this Modification revises the provisions for Economy Energy by adding a 3.75 mills per kilowatthour minimum to I&ME's provisions for the transmission of Economy Energy and a 3.00 mills per kilowatthour minimum to CIPS' provisions for the transmission of Economy Energy. This Modification also updates the provisions for Non-Displacement Power and Energy by adding a 2.75 mills per kilowatthour transmission demand charge when I&ME is the supplying party. AEP requests an effective date of October 30, 1985.

I&ME's rates in this Modification are the same as those presently in effect on the AEP System for other AEP affiliated operating subsidiaries which have previously been submitted and accepted for filing by the Commission. CIPS' rates in this Modification are consistent with the charges associated with the transmission demand rate CIPS presently has in effect for Emergency Service, which is presently on file with the Commission.

Copies of this filing were served upon the Michigan Public Service Commission, Public Service Commission of Indiana, and Illinois Commerce Commission.

Comment date: November 27, 1985, in accordance with Standard Paragraph E at the end of this document.

5. The Connecticut Light and Power Company

[Docket No. ER86-134-000]

November 14, 1985.

Take notice that on November 1, 1985, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated October 28, 1985 between: (1) CL&P and Western Massachusetts Electric Company (WMECO and together with CL&P, the NU Companies) and (2) Westfield Gas and Electric Department ("WG&E").

CL&P states that the Transmission Agreement provides for transmission services to WG&E for the wheeling of system power purchased from Green Mountain Power Corporation and Central Vermont Public Service Corporation, during the period from October 28, 1985 to November 30, 1986.

The transmission charge rate is a weekly rate equal to one-fifty-second of the estimated annual average cost of transmission service on the electric transmission system of the NU Companies determined in accordance with Appendix A and Exhibits I, II and III thereto, of the Transmission Agreement. The weekly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-week), and (ii) the number of kilowatts WG&E is entitled to receive during such week.

CL&P requests that the Commission waive its standard notice period and permit the Transmission Agreement to become effective on October 28, 1985.

WMECO has filed a certificate of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO and WG&E (Westfield, Massachusetts).

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: November 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. The Connecticut Light and Power Company

Docket No. ER86-131-000]

November 14, 1985.

Take notice that on November 1, 1985, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated May 20, 1985 between: (1) CL&P and Western Massachusetts Electric Company (WMECO and together with CL&P, the NU Companies) and (2) Vermont Public Power Supply Authority (VPPSA).

CL&P states that the Transmission Agreement provides for weekly transmission services on an as needed and as available basis to VPPSA for the wheeling of their purchase from the Connecticut Municipal Electric Energy Cooperative ("CMEEC") of an entitlement in capacity and associated energy during the period from May 20, 1985 to May 31, 1986.

The transmission charge rate is a weekly rate equal to one-fifty-second of the annual average cost of transmission service on the electric transmission system of the NU Companies determined in accordance with Appendix A and Exhibits I, II and III thereto, of the Transmission Agreement. The weekly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-weekly), and (ii) the number of kilowatts VPPSA is entitled to receive during such week. The weekly transmission charge is reduced by up to 50% to give due recognition for payments made by VPPSA to other systems also providing transmission service.

CL&P requests that the Commission waive its standard notice period and permit the Transmission Agreement to become effective on May 20, 1985.

WMECO has filed a certificate of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and VPPSA (Williston, Vermont).

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: November 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Middle South Services, Inc.

[Docket No. ER86-127-000]

November 14, 1985.

Take notice that Middle South Services, Inc. (MSS), as agent for Mississippi Power & Light Company (MP&L), on November 1, 1985 tendered for filing an Interchange Agreement between Alabama Electric Cooperative, Inc. and MP&L, including rate schedules for economy energy, emergency service, and replacement energy.

MSS requests an effective date of September 1, 1985 for the Agreement. MSS requests waiver of the Commission's notice requirements under Section 35.11 of the Commission's Regulations.

Comment date: November 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER86-124-000]

November 14, 1985.

Take notice that on November 1, 1985, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing Third Revised Sheet No. 5C, superseding Second Revised Sheet No. 5C (Index of Purchasers) of Pacific's FERC Electric Tariff, Original Volume No. 3 (Tariff), and Service Agreements between Pacific and the following parties:

Parties

Department of Water and Power of the City of Los Angeles
City of Riverside Public Utilities Department

Pacific states that the Service Agreements provide for the sale of nonfirm power and energy, in accordance with the rates specified in Service Schedule PPL-3 under Pacific's Tariff.

Comment date: November 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company

[Docket No. ER85-398-002]

November 15, 1985.

Take notice that on October 31, 1985 Northern States Power Company tendered for filing wholesale rate schedules for Northern State Power Company (Wisconsin) reflecting the approved settlements rates in Docket No. ER85-398-000. The affected wholesale customers and the FERC rate schedule designations of their contracts are as follows:

Customer	FERC rate schedule No.
Village of Trempealeau	52, Supplement No. 15.
Wisconsin Public Power Inc. System for the City of Westby.	55, Supplement No. 16.
City of Rice Lake	56, Supplement No. 13.
City of Bangor	58, Supplement No. 12.
City of Cornell	55, Supplement No. 12.
Wisconsin Public Power Inc. System for the City of New Richmond.	60, Supplement No. 14.
Village of Cadott	61, Supplement No. 8.
City of Bloomer	62, Supplement No. 16.
City of Spooner	64, Supplement No. 8.
Wisconsin Public Inc. System for the City of River Falls.	69, Supplement No. 15.
Wisconsin Public Power Inc. System for the City Black River Falls.	70, Supplement No. 14.
City of Barron	71, Supplement No. 7.
Wisconsin Public Power Inc. System for the City Whitehall.	72, Supplement No. 6.

In addition to the above rate schedules, Fifth Revised Sheet Nos. 1 and 2, and First Revised Sheet No. 3 for FERC Electric Tariff Original Volume No. 2 is enclosed.

Comment date: November 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER86-112-000]

November 15, 1985.

Take notice that on November 1, 1985, Niagara Mohawk Power Corporation (Niagara) tendered for filing Notices of Cancellation the following rate schedules: Mohawk Power Corporation FPC Schedules 26, 36, 47, 67, and 81 and FERC Schedules 107 and 127.

Comment date: November 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Company Services, Inc.

[Docket No. ER86-103-000]

November 14, 1985.

Take notice that on November 4, 1985, Southern Company Services, Inc., on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company, tendered for filing the Southern Company Intercompany Interchange Contract, together with an Allocation Methodology and Periodic Rate Computation Manual showing the basis for interchange and pooling transactions between such companies. The filing also includes informational schedules which detail the charges and derivation of components of the rates to be used during the calendar year 1986. The new Intercompany Interchange Contract is proposed to be effective on January 1, 1986.

The new Southern Company System Intercompnay Interchange Contract constitutes a coordination and interchange agreement between the operating companies of The Southern Company system. The Contract provides for certain power pooling transactions, including exchange of interchange energy and the pricing thereof, the purchase and sale of capacity and the rates and charges thereof, as well as other interchange arrangements between the operating companies.

Comment date: November 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER85-791-000]

November 15, 1985.

Take notice that on November 4, 1985 Southern Company Services, Inc. tendered for filing an amendment to its September 24, 1985 filing. The September 24, 1985 filing was a letter agreement extending the term of Service Schedule S to an interchange contract between Florida Power & Light Company and Southern Companies. By the terms of the letter agreement Service Schedule S has been extended to allow for additional purchases by Southern Companies from South Carolina Electric & Gas Company for contemporaneous sale and delivery to Florida Power & Light Company. The extended term of the service schedule shall be for a period which would allow delivery of up to an additional 460 GWH but no later than December 31, 1985. This amendemnt is being filed to include the Certificate of Concurrence of Southern Company Services, Inc. as the representative of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company.

Comment date: November 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

13. Upper Peninsula Power Company

[Docket No. ER86-139-000]

November 14, 1985.

Take notice that on November 5, 1985, Upper Peninsula Power Company filed an amendment to the 1978 Basic Agreement. The other parties to that Agreement, Upper Peninsula Generating Company and Cliffs Electric Service Company, filed certificates of concurrence. The effect of the amendment will be to revise the manner in which the annual carrying charges on certain transmission facilities are shared by the parties.

An effective date of January 1, 1985 is requested.

Comment date: November 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

14. Consumers Power Company

[Docket No. ER86-126-000]

November 14, 1985.

Take notice that on November 1, 1985, Consumers Power Company ("Consumers") tendered for filing Supplemental Agreement No. 2 to Service Agreement Wholesale for Resale Electric Service between Consumers and the City of Hart. The sole purpose of Supplemental Agreement No. 2 is to reduce the customer's contract capacity reservation from 4,034 kilowatts to 3,200 kilowatts.

Copies of this filing were served upon the parties and the Michigan Public Service Commission.

Comment date: November 27, 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, 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 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, NW, Washington, DC 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. 85-27938 Filed 11-21-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-120-000]

Pacific Gas and Electric Co.; Filing

November 14, 1985.

Take notice that on November 1, 1985, Pacific Gas and Electric Company (PGandE) tendered for filing proposed changes in rates and changes of certain electric services in two phases by a total of approximately $2.1 million.

The proposed effective date for the Phase I tariff sheets for the service provided DWR by PGandE is January 1, 1986, 60 days after the date of this filing. For the reasons set out below, PGandE respectfully requests that the Phase I rates be allowed to become effective with no suspension or, if deemed necessary, with no more than a one day suspension.

The proposed effective date for the Phase II tariff sheets for the service provided DWR is January 2, 1986, 61 days after the date of this filing. PGandE respectfully requests that these rates be allowed to become effective on the requested date, or in the alternative, with minimal suspension.

Copies of this filing were served upon all affected customers and upon the State Commission of California.

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 November 25, 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. 85-27934 Filed 11-21-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of October 25 Through November 1, 1985

During the Week of October 25 through November 1, 1985, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearing and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 15, 1985.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

(Week of Oct. 25 through Nov. 1, 1985)

Date	Name and location of applicant	Case No.	Type of submission
Oct. 28, 1985	Howard Oil Co., Washington, DC	KEF-0008	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with the settlement agreement entered into by Howard Oil Co., Inc. and the DOE.
Oct. 29, 1985	Shell Oil Co., Washington, DC	KRD-0003	Motion for discovery. If granted: Discovery would be granted to Shell Oil Co. in connection with the Statement of Objections submitted in response to the Proposed Remedial Order issued to the firm (Case No. HRO-0286).
Oct. 10, 1985	Economic Regulatory Administration, Washington, DC	KRZ-0003	Interlocutory. If granted: The Economic Regulatory Administration would be granted leave to file a Response to Consolidated Materials' Reply to ERA's Response to Consolidated Materials' Supplemental Witness List (Case No. HRO-0107).
Do	Economic Regulatory Administration, Washington, DC	KRZ-0004	Interlocutory. If granted: The Office of Hearings and Appeals would reconsider its Oct. 3, 1985 denial of the Economic Regulatory Administration's Request for Leave to File a Response to Consolidated Materials' Reply to ERA's Response to the firm's Supplemental Witness List, in connection with the Proposed Remedial Order issued to Consolidated Materials, Inc. (Case No. HRO-0107).

REFUND APPLICATIONS RECEIVED

[Week of Oct. 25 to Nov. 1, 1985]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
10/28/85	Gulf/Dowden's Gulf	RF40-3066
10/15/85	Union Texas/Borg-Warner Chemicals	RF140-33
10/28/85	Navajo/Phelps Dodge Corp	RF203-3
10/28/85	Good Hope/Chevron (Gulf Oil Corp.)	RF189-18
10/28/85	Gulf/Fain's Gulf Service	RF40-3068
10/28/85	Gulf/Hicks Plaza, Inc	RF40-3067
10/25/85	Petrolane-Lomita/Atlantic Richfield	RF208-1
10/28/85	L&L/Noble Drilling Corp	RF198-4
10/28/85	Eugene Endicott/TASCO, Inc	RF188-4
10/29/85	Navajo/Caribou Four Corners, Inc.	RF203-4
10/30/85	Plateau/Graves Oil & Butane Co., Inc.	RF204-6
10/30/85	Plateau/Clark's Service Station, Inc.	RF204-5
10/30/85	Plateau/Jim Dible Oil Co	RF204-4
10/30/85	Plateau/Energy Cooperative, Inc	RF204-3
10/30/85	Receive Orders/Ergon Refining, Inc.	RF171-18
10/31/85	Good Hope/Ashland Petroleum Co.	RF189-19
10/31/85	Good Hope/Allied Oil Co	RF189-20
10/31/85	Plateau/Chevron, USA, Inc	RF204-7
10/3/85	Petrolane-Lomita/Chevron, USA, Inc.	RF208-2
10/31/85	Colline/West Virginia	RQ2-244
10/31/85	Central/Fred's Auto Repair	RF209-1
11/1/85	Thompson/Defense Logistics	RF165-2
11/1/85	Sabor/U.S. Oil Co	RF192-3
11/1/85	Navajo/Defense Logistics Agency	RF203-5
11/1/85	Gulf/Pollocks Gulf Service	RF40-3069
11/1/85	Sabor/Defense Logistics Agency	RF192-5
11/1/85	Saber/Potomac Electric Power Co.	RF192-4
11/1/85	United/Defense Logistic's Agency	RF210-1

[FR Doc. 85-27962 Filed 11-21-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of October 28 Through November 1, 1985

During the week of October 25 through November 1, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Douglas L. Miller, 10/30/85, KFA-0001

Douglas L. Miller filed an Appeal from a partial denial by the Director of the DOE Office of Personnel of a Request for Information which he submitted pursuant to the Freedom of Information Act. The Director had denied Miller's request for information pertaining to the selection of an applicant for a position, including the identities of the selection panel, the supervisory appraisal form for the successful applicant, and information pertaining to the unsuccessful applicants. The DOE determined that the names of the panel members were properly withheld pursuant to Exemption 5. The DOE further determined that disclosure of the successful applicant's supervisory appraisal would constitute an unwarranted invasion of his personal privacy and, therefore, was withholdable pursuant to Exemption 6. Finally, the DOE determined that the identities and other information pertaining to the unsuccessful applicants was properly withheld pursuant to Exemption 6. Accordingly, the Appeal was denied.

Remedial Orders

Big Muddy Oil Processors, Inc., 10/30/85; HRO-0289

The Attorney General of the State of Texas objected to a Proposed Remedial Order (PRO) which the Office of Enforcement Programs of the Economic Regulatory Administration (ERA) issued to Big Muddy Oil Processors, Inc. on March 27, 1985. Big Muddy did not elect to file a Statement of Objections to the PRO. In the March 27 PRO, the ERA found that Big Muddy violated the provisions of the crude oil reseller regulations and directed the firm to refund $1,454,876.35 plus accrued interest to the DOE. Texas objected that the PRO did not contain provisions for the disposition of the refunds through 10 CFR Part 205, Subpart V. The DOE modified the PRO to provide for a Subpart V proceeding and, as modified, issued it as a final Remedial Order.

Erickson Refining Corp., 10/31/85, HRO-0187

The Office of Hearings and Appeals issued a Remedial Order to a crude oil reseller which the OHA determined had violated the "layering" regulation. The Remedial Order required the firm to refund $1,238,405.84 plus interest. In its decision, the OHA rejected the firm's argument that the layering regulation was improperly promulgated and found that the firm did not provide any service "traditionally and historically associated with the resale of crude oil." The decision examines the history of the layering rulemaking, the comments to that rulemaking, and a subsequent rule which created exceptions to the layering regulation.

Hydrocarbons, Ltd., 10/31/85, HRO-0197

Hydrocarbons, Ltd. objected to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on May 10, 1983. In the Proposed Remedial Order, the ERA found that Hydrocarbons, Ltd., a crude oil reseller, charged excessive prices in crude oil sales during the period from January 1, 1978 through December 31, 1980 in contravention of 10 CFR 212.182 and 212.183. After considering the firm's objections, the DOE concluded that the Proposed Remedial Order should be issued as a final Order. The important issues discussed in the Decision and Order include (i) whether the DOE or the firm is required to identify the "nearest comparable reseller" for purposes of compliance with § 212.183(c), and (ii) whether compliance with that provision required firms to violate anti-trust laws.

Requests for Exception

Barrier Oil Corp., 10/18/85, HEE-0153

Barrier Oil Corp. filed an Application for Exception seeking relief from the requirement that it prepare and file EIA Form EIA-782B. In considering the request, the DOE found that the firm's claim that it was unduly burdened by the filing requirement was meritorious. Specifically, the DOE determined that the filing requirement imposed a gross inequity on Barrier. Accordingly, the DOE granted exception relief to relieve Barrier of its reporting obligation for three months.

Petro-Thermo Corporation, 10/30/85, HEE-0074

On August 12, 1983, Petro-Thermo Corporation (PTC) filed an Application for Exception with the Office of Hearings and Appeals. In its Application, the firm requested retroactive exception relief which would permit it to retain revenues which it received in crude oil sales during the period November 1, 1973 through January 27, 1981 at prices in excess of the permissible levels under the Mandatory Petroleum Price Regulations. On March 30, 1984, the DOE issued a Proposed Decision and Order in which PTC's exception request was tentatively denied on the grounds of "unclean hands." After careful consideration of the issues raised in PTC's Statement of Objections to the Proposed Decision, the DOE determined that the firm's Application for Exception should be judged on its merits but should be denied. Specifically, the DOE found that, although the firm would have received some prospective exception relief had a timely application been filed, the firm has failed to meet the criteria for the approval of retroactive exception relief. The important issues discussed in the Decision and Order include: (i) The extent to which exception relief should be approved to encourage crude oil reclaiming operations; (ii) whether exception relief should be granted with respect to a firm's sales of non-crude oil blending agents or volumes of reclaimed crude oil which the firm mixed and sold together with refined product blending agents as crude oil; (iii) the extent to which a firm's current financial status should be considered in determining a firm's eligibility for retroactive exception relief; and (iv) whether depreciation expenses should be considered in an analysis of financial hardship for purposes of determining whether exception relief is appropriate.

Motions for Discovery

Economic Regulatory Administration, 11/1/85, HRD-0293

The DOE's Economic Regulatory Administration (ERA) filed a Motion for Discovery in connection with a pending enforcement proceeding involving Texaco Inc. See *Texaco Inc.*, No. HRO-0272 (Statement of Objections filed July 22, 1985). That proceeding involves a Proposed Remedial Order (PRO) in which ERA challenges the May 15, 1973 prices that Texaco determined for certain customers. In its motion, the ERA requested discovery with respect to two additional factual representations set forth in Texaco's Statement of Objections. The first factual representation was that the May 15, 1973 prices that Texaco utilized for the customers specified in the PRO were the same as the May 15, 1973 prices charged "similarly

situated customers with substantively identical variable-priced contracts." The DOE found that since Texaco conceded that it had single-member classes of purchaser, information concerning Texaco's sales to customers other than those specified in the PRO were not relevant to the proper determination of May 15, 1973 prices for the customers specified in the PRO. Accordingly, ERA's request for discovery with respect to that representation was denied. The second factual representation was that certain "undercharge/offset situations" existed that required reduction of the alleged violation amount. The DOE found that since Texaco did not contend that these "undercharge/offset situations" met the requirements of *Mid-Continent, Inc.*, 3 FEA ¶ 80,507 (1975), ERA's request to discover whether the alleged "undercharge/offset situations" met those requirements did not relate to an issue in the proceeding. Accordingly, this request for discovery was denied.

R.W. Tyson Producing Co., 10/30/85, HRD-0166, HRD-0166

R.W. Tyson Producing Co., Inc. ("Tyson") filed Motions for Discovery and Evidentiary Hearing in connection with a Proposed Remedial Order which was issued to the firm by the Economic Regulatory Administration (ERA). In its motion for Discovery, Tyson made requests for information pertaining to the ERA audit of Tyson, the factual and legal bases for the PRO, and DOE's contemporaneous construction of the crude oil producer regulations. In its Motion for Evidentiary Hearing, Tyson requested that an evidentiary hearing be convened, at which evidence would be taken with respect to two issues: (i) Whether ERA, in its audit of Tyson, used the correct posted price for crude oil produced from the Ovett and Glazier fields, and (ii) to verify the computations of the alleged overchanges. Tyson also requested permission to submit the verbatim transcript generated in *Warrior Oil Co.*, 13 DOE ¶ 83,006 (1985), as the evidentiary basis for its October 22, 1984, Motion to Supplement the Statement of Objections. The DOE denied Tyson's discovery and evidentiary hearing motions because they would not produce information which was relevant and material to the resolution of any contested issues raised in the Proposed Remedial Order proceeding. However, DOE granted Tyson's request to submit the verbatim transcript generated in *Warrior Oil Co.* as the evidentiary basis for its Motion to Supplement since the *Warrior hearing addressed the same issue and facts as those which are involved in Tyson's Motion to Supplement.*

Refund Applications.

Foster Oil Company/Joyce Adamic Carroll, 10/30/85, RF146-1

The DOE issued a Decision and Order concerning an Application for Refund filed by Joyce Adamic Carroll on behalf of Norm Adamic Arrow Service, a reseller of motor gasoline purchased from Foster Oil Company. Carroll requested a refund below the $5,000 threshold level and provided adequate verification that she is the proper recipient of the refund intended for Adamic. In accordance with the procedures established in the Foster Special Refund Proceeding, the DOE determined that Carroll should receive a refund based on a prorated portion of the alleged overcharges to Adamic. The total refund amount approved in this Decision is $995 ($630 principal plus $365 interest).

Glaser Gas, Inc., Red Tag Gas Company, 10/30/85, RF174-2

The DOE issued a Decision and Order concerning an Application for Refund filed by Red Tag Gas, Company, a reseller of propane purchased from Glaser Gas, Inc. Red Tag requested a refund of $15,352, a prorated portion of the alleged overcharges to the firm, but was unable to make a sufficient showing of injury to merit a refund over the $5,000 threshold level. Accordingly, the DOE determined that Red Tag should receive a refund equal to the $5,000 threshold amount, plus $2,527 interest.

Good Hope Refineries/System Fuels, Inc.; Consolidated Edison of New York, 10/31/85, RF189-12, RF189-14

The DOE issued a Decision and Order concerning two Applications for Refund filed by end-users of Good Hope fuel oil. Both claimants applied for refunds based on the procedures outlined in *Good Hope Refineries*, 13 DOE ¶ 85,105 (1985). Both applicants are public utilities, and therefore were considered end-users who were injured by the overcharges alleged in this proceeding. The applicants established that the fuel oil they purchased originated with Good Hope, and indicated that any refunds received would be passed through to their customers. After examining the applications and supporting documentation, the DOE concluded that the applicants should receive refunds of the full volumetric amount. The refunds granted in this decision total $270,825, including interest.

Gulf Oil Corporation/Bottini Fuel Corporation, et al., 10/31/85, RF40-824 et al.

Bottini Fuel Corporation and 45 other gasoline and middle distillate wholesalers and retailers, filed Applications for Refund in which they sought a portion of the funds obtained by the DOE through a consent order entered into with the Gulf Oil Corporation. The DOE found that each of the firms demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund amount that it claimed. The DOE therefore decided that Bottini Fuel Corporation and the 45 other wholesalers and resellers would receive a cumulative refund amount totalling $311,623, representing $269,634 in principal and $41,989 in interest.

Inland U.S.A., Inc./Kellett Oil Company et al., 10/31/85, RF176-2 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by nine resellers of motor gasoline purchased from Inland U.S.A., Inc. Each applicant provided documentation of purchase volumes and requested a refund at or below the $5,000 threshold level. In accordance with the procedures established in the Inland Special Refund Proceeding, the DOE determined that each applicant should receive a refund based on a prorated portion of the alleged overcharges to the applicant. The total amount of refunds approved in this Decision is $28,853 ($20, 458 principal plus $8,395 interest).

Little America Refining Co./The M.H. Cook Pipeline Construction Co., 11/1/85, RF112-1, RF112-2

The M.H. Cook Pipeline Construction Company filed an application seeking a refund from a consent order fund made available by Little America Refining Company (Larco). In considering that application, the DOE first determined that the Larco volumetric refund amount should be adjusted to $.0003582 per gallon. The DOE then reviewed the Cook application and found that the firm's allocable share of the Larco fund was $28. Since Cook was an end-user of Larco product, the DOE found that the firm should receive its full allocable share without any further showing of injury. The firm was also granted interest of $11. Accordingly, the total refund granted in this proceeding was $39.

Mesa Petroleum Company/Koch Hydrocarbon Company, 11/1/85, RF120-0001

Koch Hydrocarbon Company (Koch) filed an Application for Refund in which the firm sought a portion of the funds obtained by the DOE through a Consent Order entered into by the agency and Mesa Petroleum Company (Mesa). Koch asserted that its large cost banks, its status as the largest first purchaser of Mesa product, the fact that it was the only Mesa purchaser mentioned in the Consent Order, and the excess charges it paid Mesa qualified the firm for a large portion of the Mesa consent order funds.

In a Proposed Decision and Order issued to Koch on July 11, 1985, the DOE determined that it was appropriate and necessary to quantify the injury Koch might have suffered as a result of its purchases of Mesa product. The agency found that Koch's assertions regarding first purchaser status, cost banks and excess charges did not demonstrate that it had been injured as a result of its purchases from Mesa. The agency employed a three-step competitive disadvantage methodology to assess the level of such possible injury. On the basis of the three-step methodology, the DOE tentatively concluded that Koch was eligible for a refund equal to $271,791. The States of California and Michigan objected to the DOE's tentative finding that Koch was eligible for a refund, on the grounds that Koch's possible injury could not be assessed without direct, conclusive evidence that Koch had not passed through Mesa's alleged overcharges.

In the Final Decision and Order issued in this case, the DOE found no merit to the States' contention that the OHA should require direct, conclusive evidence of Koch's nonpassthrough of Mesa's alleged overcharges. After careful consideration, the agency concluded that the three-step competitive disadvantage methodology offered the best available assessment of Koch's possible injury. The methodolog's three measures of disadvantage were found to form a range of Koch's possible injury.

Koch's net excess cost was found to be ($4,467,628) (a net cost benefit), the firm's above-marketprice volumetric share was found to equal $336,747 and its gross excess cost was determined to be $548,601. A refund of $274,301, equal to one-half the firm's gross excess cost, was found to equitably compensate the Applicant for any injury it might have suffered as a result of its purchases from Mesa. The firm also received $197,169 in accrued interest.

Warren Holding Company/Big S Oil Co., Inc., 11/1/85, *RF169-0005*

The DOE approved an Application for Refund filed by Big S Oil Co., Inc., a reseller of Warren fuel oil and motor gasoline. The firm chose to limit its claim to the $5,000 threshold for small claims set forth in *Warren Holding Co.*, 13 DOE ¶ 85,062 (1985), because it could not substantiate its claim for a refund based upon the total volumes actually purchased. In considerating this application, the DOE concluded that Big S should receive a refund of $8,895, consisting of the $5,000 threshold amount plus accured interest.

Dismissals

The following submissions were dismissed:

Name and Case No.

O.B. Mobley, Jr., KEF-0001
Westinghouse Electric Corp., RF117-8

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 15, 1985.

[FR Doc. 85-27957 Filed 11-21-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of November 4 Through November 8, 1985

During the week of November 4 through November 8, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to these applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearing and Appeals.

November 15, 1985.

PJW Corporation, Pacific Northern Oil, Carlson Oil Company, Pomona, CA; Seattle, WA; Newark, IL; HEE-0165, HEE-0166, HEE-0167

PJW Corp., Pacific Northern Oil, and Carlson Oil Co. each filed Application for Exception from the Energy Information Administration reporting requirements. The exception requests, if granted, would permit the three firms to be relieved of the requirement to prepare Form EIA-782B. On November 8, 1985, the Department of Enegy issued a Proposed Decision and Order which determined that the exception requests be denied.

[FR Doc. 85- 27958 Filed 11-21-85; 8:45 am]

BILLING CODE 6450-01

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $9,000 obtained as a result of a consent order which the DOE entered into with Luke Brothers, Inc. (Luke), a retailer of propane located in Calera, Oklahoma. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0120.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $9,000 plus accrued interest obtained by the DOE under the terms of a consent order, entered into with Luke Brothers, Inc. The funds were provided to the DOE by Luke to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of propane during the period November 1, 1973, through September 30, 1975.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to individuals who purchased propane from Luke. Since all purchasers were "domestic consumers" of the propane and are considered to have suffered injury as a result of those purchases, an applicant need only submit a schedule of its monthly purchases from Luke including the dates of such purchases, in order to document its injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views cconcerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments.

Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: November 15, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Luke Brothers, Inc.
Date of Filing: October 13, 1983
Case Number: HEF-0120

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Luke Brothers, Inc. (Luke).

I. Background

Luke is a "retailer" of "propane" as those terms were defined in 10 CFR 212.31, and is located in Calera, Oklahoma. A DOE audit of Luke's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. In order to settle all claims and disputes between Luke and the DOE regarding Luke's compliance with the DOE's price regulations in its sales of propane during the period November 1, 1973 through September 30, 1975 (the consent order period), the firm entered into a consent order with the DOE on May 12, 1981.[1] In accordance with the consent order, Luke agreed to remit $9,000 to the DOE for deposit in an interest-bearing escrow account pending distribution by the DOE. The consent order states that Luke does not admit to having violated the price regulations in its sales of propane. Luke paid the $9,000 in full on May 12, 1981.[2]

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from purchasers of refined petroleum products who may have been injured by Luke's pricing practices during the consent order period. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

III. Proposed Refund Procedures

Insofar as possible, the consent order fund should be distributed to those customers who were injured by Luke's alleged pricing violations in its sales of propane. We therefore propose to establish a claims procedure in which we will accept applications for refund from customers who can demonstrate that they were injured as a result of any alleged overcharges committed by Luke during the consent order period.

As an initital matter, we will adopt a presumption that any alleged overcharges by Luke were dispersed equally in all sales of propane made by the firm during the consent order period. In the past, we have used a volumetric refund amount as an equitable means for distributing funds based on this presumption. *See, e.g., Vickers*. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

[i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rate, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Luke times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.007030 per gallon.[3]

In addition to the volumetric presumption, we are making a finding that Luke's customers, all of whom were "domestic consumers" according to the autdit workpapers, were injured by the alleged overcharges settled in the consent order. Obviously, individual, private consumer-purchasers absorbed the increased product costs, as distinguished from resellers which may have had the opportunity to pass through those costs to their own customers. *See Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984). We propose, therefore, that end-users of propane purchased from Luke need only document their propane purchase

[1] The consent order resolved violations referred to in a Remedial Order issued on October 5, 1976, and amended on April 20, 1977. The consent order represents a negotiated settlement, and the settlement amount constitutes 32.1 percent of the alleged overcharges.

[2] As of September 30, 1985, the Luke escrow account contained $14,379.89, representing $9,000 in principal, and $5,379.89 in accrued interest.

[3] This figure was derived by dividing the $9,000 principal amount by the 1,280,170 gallons of propane sold by Luke during the consent order period. The volume figure represents an estimate which we calculated by extrapolating available audit data.

volumes to make a sufficient showing that they were injured by the alleged overcharges.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of lesss than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85.225. *See also* 10 CFR 205.286(b). The same principle applies here.

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. We will publish copies of the proposed and final Decision in the **Federal Register.**

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first state refund procedure is completed.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Luke Brothers, Inc. pursuant to the consent order executed on May 12, 1981, will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-27959 Filed 11-21-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $113,853 obtained as a result of a consent order which the DOE entered into with Pasco Petroleum Company, Inc., a reseller of covered products located in Phoenix, Arizona. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Pasco consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register.** All applications should refer to Case Number HEF-0146 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered into by the DOE and Pasco Petroleum Company, Inc. which setttled possible pricing violations in Pasco's sales of motor gasoline during the consent order period, November 1, 1973, through April 30, 1974. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments for the public concerning the distribution of the Pasco consent order funds was issued on June 24, 1985. 50 FR 27669 (July 5, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Pasco pursuant to the consent order. The DOE has decided that a portion of the consent order funds should be distributed to the 7 first purchasers which the DOE's audit of Pasco indicated may have been overcharged, provided each files an application for refund and makes any necessary showing of injury. Each claimant identified in the audit will be required to submit either a schedule of its monthly purchases of motor gasoline from Pasco or a statement verifying that it purchased motor gasoline from Pasco and is willing to rely on the data in the audit file. Applications for refund will also be accepted from purchasers not identified by the DOE audit. These purcahsers will be required to provide specific documentation concerning the volume of motor gasoline purchased, the date of purchase, and the extent of any injury alleged. Any applicant claiming $5,000 or less, however, may simply submit evidence or its purchase volumes to document its injury.

As the Decision and Order pubished with this Notice indicates, applications for refunds may now be filed by customers who purchased motor gasoline from Pasco during the consent order period. Applications will be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register.** The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: November 15, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Pasco Petroleum Co., Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0146.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify those persons who likely were injured by alleged overcharges or to readily ascertain the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1982), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the inplementation of Special Refund Procedures in connection with the consent order which it entered into with Pasco Petroleum Co., Inc. (Pasco).

I. Background

Pasco is a "reseller" of "covered products" as those terms were defined in 10 CFR 212.31, and is located in Phoenix, Arizona. A DOE audit of the firm's records revealed possible violations of the Mandatory Petroleum Price Regulations with respect to sales of motor gasoline during the period November 1, 1973 through April 30, 1974 (consent order period). In order to settle all claims and disputes between Pasco and the DOE regarding the firm's sales of motor gasoline during the audit period, Pasco and the DOE entered into a consent order on September 1, 1981. The consent order refers to ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, the consent order states that Pasco does not admit that it committed any such violations. According to the Pasco consent order,

Pasco was required to deposit $113,853, which includes interest to date of deposit, into an interest-bearing escrow account for ultimate distribution by the DOE. Of the funds Pasco placed in the escrow account, $3,638 is attributable to sales made to the firm's wholesale customers, and $110,215 is attributable to sales made to its retail customers through company-owned stations. The consent order funds were paid in full on August 27, 1981.[1]

II. Jurisdiction and Authority to Fashion Refund Procedures

On June 24, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that can make a reasonable demonstration of injury as a result of Pasco's alleged violations in its sales of motor gasoline during the consent order period 50 Fed. Reg. 27,669 (July 5, 1985). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for injuries which were probably experienced as a result of actual or alleged violations of the DOE regulations. In order to effect restitution in this proceeding, the PD&O tentatively determined that it was appropriate to rely on the information assembled in the ERA audit file. Our experience with similar cases supports the use of this approach where most or all of the potentially affected purchasers appear to be identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a more precise determination of the identities of adversely affected first purchasers was possible. At the same time, it was recognized that there may have been other purchasers or repurchasers that were not identified by the ERA audit but that may have been affected by Pasco's pricing practices during the audit period. Like the identified firms, these purchasers could also be entitled to a refund of a portion of the consent order funds. Therefore, procedures by which such purchasers could establish a claim were also proposed.

In order to give notice to all potentially affected parties, a copy of the PD&O was published in the **Federal Register**, and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was mailed to each purchaser identified in the audit file whose address was available. None of Pasco's customers submitted comments on the proposed procedures. Comments were submitted by the State of Indiana and, collectively, on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. All of these comments concern the distribution of any funds remaining after all refunds have been made to injured parties. However, the purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the Pasco refund proceeding. Any procedures pertaining to the disposition of any monies remaining after this first stage will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, we will not address the issues raised by the states at this time.

A. Refunds to Idenfitied Purchasers

The PD&O stated that during the audit of Pasco, seven wholesale purchasers were identified as having allegedly been overcharged. The DOE audit files do not necessarily provide conclusive evidence of the identity of all possible refund receipients or the refund that may be appropriate in any particular case. However, the information contained in the audit files may reasonably be used for guidance. *See Armstrong & Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have provided that the funds in the escrow account be apportioned either among the customers identified by the audit, or to subsequent purchasers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Brown Oil Co.*, 12 DOE ¶ 85,028 (1984); *and Reinhard Distributors, Inc.*, 12 DOE ¶ 85,137 (1984). The first purchasers identified by the audit, with the share of the settlement amount allotted to each by ERA, are listed in the Appendix to this decision.

Identification of first purchasers is only the initial step in any proper refund distribution process. We must also determine whether these first purchasers were actually injured, or whether any part of the alleged overcharges were passed on. In addition to the information in the record at this time, we will use certain presumptions to determine a purchaser's level of injury and thereby distribute the funds in the escrow account. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evalution of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumption we will adopt in this case will permit claimants to participate in the refund process at a reasonable cost, and will enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we will adopt a presumption that claimants seeking small refunds were injured by Pasco's pricing practices.

There are a number of bases for such a presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore experienced some impact of the alleged overcharges. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed both the expected refund and the benefits from any additional precision. Consequently, without simplified procedures, some injured parties would be effectively denied an opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze extensive, detailed proof of what resulted from the initial impact of the alleged overcharges.

Under the small claims presumption, a claimant that is a reseller or retailer of Pasco products will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based upon purchases below a certain level. Several factors determine the value of the threshold below which a claimant would not be required to submit any further evidence of injury beyond volumes purchased. Principal among these factors is the concern that the cost to the applicant and to the government of compiling and analyzing information sufficient to show injury not

[1] As of September 30, 1985, the Pasco escrow account contained $174,117.75, representing $113,853 in principal and $60,264.75 in accrued interest.

exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the consent order period is many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein. According to the record, all of Pasco's customers listed in the Appendix made small purchases of the firm's products during the consent order period.

In addition, we propose a finding that end-user—or ultimate consumer—purchasers whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We have concluded that end-users of Pasco petroleum products need only document their purchase volumes from Pasco to make a sufficient showing that they were injured by the alleged overcharges.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. Refunds to Other Purchasers

As discussed above, this Decision concerns the distribution of $113,853 which Pasco deposited into the escrow account, plus accrued interest to date. Since the refunds allocated to Pasco's identified wholesale purchasers total only $3,638, the remaining portion of available funds is available for distribution to the as yet unidentified purchasers who were injured by Pasco's alleged overcharges. Potential applicants may include wholesale purchasers which were not identified by the ERA audit, or customers which purchased motor gasoline from Pasco's many retail stations. Unidentified reseller claimants will be subject to the same presumptions and requirements which we have required of the firms and individuals listed in the Appendix to this Decision, and which have been discussed above. We will not require any detailed documentation of injury beyond purchase volumes for customers which bought from Pasco's retail stations. *See Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984).

As we proposed, we will use a volumetric system to distribute the remaining $110,215 in escrow to individuals and firms who purchased motor gasoline from Pasco. Under this system, a successful claimant's refund is determined by multiplying a factor, known as the volumetric refund amount, by the number of gallons of fuel purchased by the claimant.[2] The volumetric refund amount is the average per gallon refund and in this case equals $0.005751 per gallon.[3] Potential applicants may use this figure to estimate the refunds to which they may be entitled.

The volumetric presumption assumes that the alleged overcharges were dispersed evenly in all sales of gasoline made by Pasco during the consent order period. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser may have been greater than the pro rata amount determined by the volumetric presumption. Certain purchasers may believe that they suffered disproportionate injury as a result of a firm's pricing practices during the consent order period. Any such purchaser may file a refund application requesting an amount greater than that calculated using the volumetric presumption. *See e.g., Sid Richardson Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164. Similarly, purchasers identified in the ERA audit of Pasco as having been allegedly overcharged may submit information to show that they are entitled to larger refunds than those indicated in the Appendix. If larger claims are filed, or if additional meritorious claims are received, we will adjust the figures listed in the Appendix accordingly. Actual refunds will be determined only after analyzing all appropriate claims.

III. Applications for Refund

We have determined that by using the procedures described above, we can distribute the Pasco consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refund from individuals and firms who purchased motor gasoline from Pasco between November 1, 1973 and April 30, 1974. As we proposed, a portion of the consent order funds will be distributed to those firms listed in the Appendix who file applications for refund providing they make any necessary demonstrations of injury.[4] We will also grant refunds to other eligible customers of the consent order firm that apply for refunds and meet our requirements.

In the case of one individual purchaser listed in the Appendix, Harry Jordan, the copy of the PD&O sent to his last known address was returned undelivered by the Post Office. In an attempt to locate this individual and other purchasers, we will provide Pasco and various petroleum dealers' associations in the Arizona area with copies of this Decision and will publish a notice in the Federal Register. We will accept information regarding the present location of this customer for a period of 90 days from the date of publication of this Decision and Order in the Federal Register.

In order to receive a refund, each claimant identified in the Appendix will be required to submit either a schedule of its monthly purchases of motor gasoline from Pasco or a statement verifying that it purchased motor gasoline from Pasco and is willing to rely on the data in the audit file. Purchasers not identified by the ERA audit will be required to provide specific information as to the volume of motor gasoline purchased, the date of

[2] A volumetric approach is appropriate in special refund proceedings where the DOE is unable to identify readily those persons who may be eligible to receive refunds. It has proved to be an administratively efficient method for determining what proportion of the available settlement funds is available to each successful claimant. It also serves as a useful approximation of injury for claimants who are unable to quantify their injury.

[3] This number varies slightly from the volumetric factor proposed in the PD&O. That number was calculated by dividing the entire amount of consent order funds by the total number of gallons sold by Pasco to all of its classes of purchaser during the consent order period. Instead, we will divide the $110,215 allocated to Pasco's retail customers by 19,164,607 gallons which represents Pasco's total sales from its retail stations during the period covered by the consent order.

[4] The share of the escrow fund allotted to each firm listed in the Appendix represents 30 percent of the amount each was allegedly overcharged. This is consistent with the terms of the consent order, which represent a negotiated settlement consisting 30 percent of the total amount of alleged overcharges identified by the audit.

purchase, and the extent of any injury alleged.

In addition, all applications must state:

(1) Whether the applicant has previously received a refud, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(2) Whether there has been a change in ownership of the firm since the audit perod. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(3) Whether the applicant is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(4) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All application must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF-0146 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by Pasco Petroleum Company pursuant to the consent order executed on September 1, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: November 15, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix

PASCO PETROLEUM COMPANY, INC.

First purchasers	Portion of settlement amount [1]
Quick Petroleum Company, 2922 W. Mariposa, Phoenix, Arizona 85017	$934
Brennan Petroleum Company, 202 E. Southern, Mesa, Arizona 85202	22
Gas-O-Tron, 6335 N. 7th Street, Phoenix, Arizona 85014	22
Shepherd Bro's., 2724 W. Glenndale, Phoenix, Arizona 85021	22
Harry Jordan [2]	42
Whiting Bro's., 3301 N. Hayden, Scottsdale, Arizona 85253	23
Herb Eads, Box 41, Lake Havasu City, Arizona 86403	2,573

[1] Does not include interest. Actual refunds will include interest which has accrued on these amounts since DOE received the Pasco consent orders funds on August 27, 1981.

[2] As noted in the Decision, a copy of the PD&O sent to Jordan's last know address was returned undelivered by the Post Office. We will accept information regarding the present location of this customer for a period of 90 days from the date of publication of this D&O in the **Federal Register.**

[FR Doc. 85-27960 Filed 11-21-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $600,000 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Sigmor Corporation, a refiner and reseller of petroleum products based in San Antonio, Texas.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0581.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Sigmor Corporation which settled possible violations of DOE price controls in the firm's sales of covered petroleum products to its customers during the January 1973 through January 1981 period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the consents of an escrow account funded by Sigmor pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of covered products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register,** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: November 13, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Sigmor Corporation
Date of Filing: May 6, 1985
Case Number: HEF-0581

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V

process may be used in situations where DOE is unable readily to ascertain the persons who were injured or the amounts that such persons may be eligible to receive as a result of enforcement proceedings. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Sigmor Corporation (Sigmor) is now a subsidiary of Diamond Shamrock. However, during the consent order period, Diamond Shamrock was Sigmor's major supplier of motor gasoline. Sigmor's reseller operation was comprised of Sigmor Corporation and Houston Electronic and Processing Company (HEPCO), which Sigmor acquired in 1978. Its retail operation was comprised of 930 service stations (530 Sigmor Service Stations and 400 Autotronic Service Stations) owned and operated by Sigmor. In 1978, Sigmor opened its own refinery in Three Rivers, Texas. At that time, Sigmor Refining Company, a subsidiary of Sigmor Corporation, began suplying motor gasoline and other petroleum products to its own service stations as well as additional customers. In 1978, Sigmor Corporation also acquired additional service stations from Autotronic Systems, Inc.

During the period of federal controls, Sigmor was a reseller-retailer of motor gasoline as well as a refiner of crude oil as those terms were defined in 10 CFR Part 212. A DOE audit of Sigmor's records revealed possible regulatory violations with respect to the firm's pricing of motor gasoline during the period January 1, 1973 through January 28, 1981 (the consent order period). To settle all claims and disputes between Sigmor and the DOE regarding the firm's pricing of refined products during the period January 1, 1973 through January 28, 1981, Sigmor and the DOE entered into a consent order on December 8, 1983. Under the terms of the consent order, Sigmor remitted $600,000 to the DOE on January 4, 1984. That sum is being held in an interest bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of September 30, 1985, the Sigmor escrow account had earned $102,802.38 in interest. This Proposed Decision concerns the distribution of the $600,000 that was deposited in the escrow account, plus the accrued interest.

II. Jurisdiction

The DOE procedural regulations set forth general guidelines by which the Office of Hearings and Appeals may formulate a plan for distributing funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the Department is unable to readily identify persons who were injured by regulatory violations or to readily ascertain the amount of the refund they are eligible to receive. 10 CFR section 205.280. As discussed below, we have determined that the underlying Sigmor pricing practices affected all of the firm's customers. Under these circumstances, Subpart V provides a mechanism for achieving restitution to persons injured by Sigmor's practices. The Office of Hearings and Appeals will therefore accept jurisdiction over the funds at issue.

III. Proposed Refund Procedures

A. Refunds to Identifiable Purchasers

We propose that the Sigmor consent order funds be distributed to claimants who satisfactorily demonstrate that they were injured by Sigmor's alleged pricing violations. The information available to us at this time regarding Sigmor's operations during the audit period provides names and addresses of the customers of Sigmor's refining division (Sigmor Refining Company) but not the names of purchasers at Sigmor's 930 retail outlets. The products sold at these outlets consisted primarily of motor gasoline and were sold by Sigmor service stations and Fill 'em Fast gasoline stations. These stations were located in Texas, Louisiana, California, Pennsylvania, Virginia, Colorado, Georgia, Tennessee, Washington and eleven other states.

From our research, we believe that the claimants in this proceeding will fall into the following categories: (1) Resellers (including retailers), and (2) firms, individuals, or organizations that were consumers (end-users). The petroleum products purchased by these claimants were purchased either directly from Sigmor or from other firms in a chain of distribution leading back to Sigmor. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Sigmor petroleum products for the period January 1, 1973 through January 28, 1981.[1] If the products were not purchased directly from Sigmor, the claimant must include a statement setting forth its reasons for believing the product originated with Sigmor. In addition, a reseller or retailer that files a claim will be required to establish that it was injured by the alleged overcharges. To make this showing, a reseller or retailer claimant will be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982).

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Sigmor during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individuals claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incuring disproportinate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limted resources available.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it bore a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

The presumption that claimants seeking smaller refunds were injured by

[1] In June 1976, heating oil and fuel oil were deregulated. Consequently, they were not subject to any type of price control after this date. Therefore, Applications for Refund will not be accepted for these products if they were purchased after June 1976.

the pricing practices settled in the Sigmor consent order is based on a number of considerations. *See e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Sigmor and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be requried to submit any additional evidence of injury beyond purchase volumes if its refund claim is below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable.[2] *See Texas Oil & Gas Corp., supra; Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited therein.

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Sigmor petroleum products need only document their purchase volumes from Sigmor to make a sufficient showing that they were injured by the alleged overcharges.

We believe that if a reseller or retailer made only spot purchases from Sigmor, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, 8 DOE ¶ 82,597 (1981) at 85,396–97. We believe the same rationale is true in the present case. Accordingly, a spot purchaser which files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Sigmor petroleum products. *See Amoco* at 88,200.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by our estimate of the total gallonage of products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $0.000134 per gallon,[3] exclusive of interest. As of September 30, 1985, accumulated interest increased the volumetric refund amount to $0.000157.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. The information currently available to us provides the names and addresses of at least some of the Sigmor Refinery customers. It does not, however, provide the names and addresses of Sigmor's Service Station customers. Therefore, in addition to publishing notice in the **Federal Register**, notice will be provided to the Independent Gasoline Marketers Council, the Petroleum Marketers Association of America, the Service Station Dealers of America, the National Association of Truck Stop Operators, and the Society of Independent Gasoline Marketers of America. These organizations should be helpful in advising potential claimants of this proceeding.

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. For example, the funds may be distributed through plans formulated by state governments to benefits consumers who were likely injured by Sigmor's

[2] Resellers whose total purchases during the period for which a refund is claimed who cannot establish that they did not pass through price increases, or who limit their claims to the threshold amount, will be eligible for refunds of the $5,000 threshold amount.

[3] According to information available to us, during the consent order period, Sigmor sold 4,483,510,464 gallons of regulated petroleum products. The volumetric refund amount is obtained by dividing the amount remitted by Sigmor by this volume amount. $600,000 divided by 4,483,510,464 gallons = $.000134 per gallon).

alleged overcharges. *See, e.g., Northeast Petroleum Industries*, 11 DOE ¶ 85,199 (1983) what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of comments containing proposals for alternative distribution schemes.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Sigmor Corporation pursuant to the consent order executed on December 8, 1983 will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-27961 Filed 11-21-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 4G2979/T500; PH-FRL 2919-1]

American Cyanamid Co.; Renewal of Temporary Tolerance

Correction

In FR Doc. 85-26448 beginning on page 46176 in the issue of Wednesday, November 6, 1985, make the following corrections:

1. On page 46176, in the third column, in the fourth line of the SUMMARY, "methyl4" should read "methyl-4"; and

2. On page 46177, in the first column, in the sixth line of the first paragraph of the **"SUPPLEMENTARY INFORMATION"**, "252, 214" should read "252,214".

BILLING CODE 1505-02-M

[OPTS-59741; TSH-FRL 2928-6]

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 are reviewed by EPA within 21 days of receipt. This notice announces receipt of two such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86-33—November 28, 1985.

Y 86-34—December 2, 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 86-33

Manufacturer. Celanese Engineering Resins.

Chemical. (G) Acetal copolymer.

Use/Production. (S) Industrial thermoplastic engineering resin used in material handling, automotive, appliance, electrical, plumbing, agricultural and hardware applications. Prod. range. Confidential.

Toxicity Data. Irritation: Skin—Not a primary irritant; Skin sensitization: Non-sensitizer; U.S.P. tissue test: No significant difference between the test and blank extracts.

Exposure. Confidential.

Environmental Release/Disposal. No release.

Y 86-34

Manfacturer. Reichhold Chemicals, Inc.

Chemical. (G) Maleated rosin ester modified with alkyl phenol formaldehyde condensate.

Use/Production. (S) Industrial printing ink vehicle. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: November 18, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-27898 Filed 11-21-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51598; TSH-FRL 2928-7]

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). This notice announces receipt of thirty-two PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-168—February 2, 1986.

P 86-142, 86-143 and 86-144—February 5, 1986.

P 86-145, 86-146, 86-147, 86-148, 86-149, 86-150, 86-151, 86-152, 86-153, 86-154, 86-155, 86-156, 86-157, 86-158 and 86-159—February 9, 1986.

P 86-160, 86-161, 86-162, 86-163, 86-164 and 86-165—February 10, 1986.

P 86-166, 86-167, 86-169, 86-170, 86-171, 86-174 and 86-175—February 11, 1986.

Written comments by:

P 86-168—January 3, 1986.

P 86-142, 86-143 and 86-144—January 5, 1986.

P 86-145, 86-146, 86-147, 86-148, 86-149, 86-150, 86-151, 86-152, 86-153, 86-154, 86-155, 86-156, 86-157, 86-158 and 86-159—January 10, 1986.

P 86-160, 86-161, 86-162, 86-163, 86-164 and 86-165—January 11, 1986.

P 86-166, 86-167, 86-169, 86-170, 86-171, 86-174 and 86-175—January 12, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51598]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Confidential Data 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 86-142

Importer. Nuodex, Inc.
Chemical. (G) Ethoxylated fatty acid amino esters.
Use/Import. (S) Industrial intermediate for polyamide-manufacturing. Import range. 700-2,100 kg/yr.
Toxicity Data. Acute oral: >10,000 mg/kg; Irritation: Skin—Extreme irritant; Eye—Non-irritant; Ames test: Non-mutagenic.
Exposure. No exposure.
Environmental Release/Disposal. No release. Disposal by biological waste water treatment plant.

P 86-143

Importer. Nuodex, Inc.
Chemical. (G) Heavy metal-containing silicate catalyst.
Use/Import. (S) Site-limited catalysis. Import range. 20,000-100,000 kg/yr.
Toxicity Data. Acute oral: >10,000 mg/kg; Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.
Exposure. No exposure.
Environmental Release/Disposal. No release.

P 86-144

Manufacturer. Confidential.
Chemical. (G) Mixed polyol ester of normal and branched chain monocarboxylic acids.
Use/Production. (G) Dispersive use. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 86-145

Importer. Confidential.
Chemical. (G) Polyamide resin.
Use/Import. (G) Ink additive. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-146

Importer. Confidential.
Chemical. (G) Polyamide resin.
Use/Import. (G) Ink Additive. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-147

Importer. Confidential.
Chemical. (G) Polyamide resin.
Use/Import. (G) Ink Additive. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-148

Importer. Confidential.
Chemical. (G) Polyamide resin.
Use/Import. (G) Ink Additive. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-149

Importer. Confidential.
Chemical. (G) Polyamide resin.
Use/Import. (G) Ink Additive. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-150

Manufacturer. Confidential.
Chemical. (G) Vinyl chloride/vinyl acetate terpolymer.
Use/Production. (S) Component of magnetic tape marine and maintenance, wood and metal coating and printing ink formulations. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-151

Manufacturer. Confidential.
Chemical. (G) Metal salt of alkylphenol sulfides phosphosulfurized polyalkene complexes.
Use/Production. (G) Lubricant additive. Prod. range. Confidential.
Toxicity Data. No data on PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-152

Manufacturer. Confidential.
Chemical. (S) 2-Hydroxyethyl trialkylacetate with carbon numbers of C_{10}—C_{12}.
Use/Production. (G) Chemical intermediate. Prod. range. Confidential.
Toxicity Data. Acute oral- >5 g/kg; Acute dermal: >3.16 g/kg; Irritation: Skin—Moderate, Eye—Irritant.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Release to air and water. Disposal by secondary biological treatment.

P 86-153

Manufacturer. Confidential.
Chemical. (S) 2-Hydroxyethyl trialkylacetate with carbon numbers of C_{11}—C_{13}.
Use/Production. (G) Chemical intermediate. Prod. range. Confidential.
Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >3.16 g/kg;; Irritation: Skin—Moderate, Eye—Irritant.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Release to air and water. Disposal by secondary biological treatment.

P 86-154

Manufacturer. Confidential.
Chemical. (S) 2-Hydroxyethyl trialkylacetate with carbon numbers of C_{12}—C_{15}.
Use/Production. (G) Chemical intermediate. Prod. range. Confidential.
Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >3.16 g/kg;; Irritation: Skin—Moderate, Eye—Irritant.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Release to air and water. Disposal by secondary biological treatment.

P 86-155

Manufacturer. Confidential.
Chemical. (S) 2-Hydroxyethyl trialkylacetate with carbon numbers of C_{13}—C_{16}.
Use/Production. (G) Chemical intermediate. Prod. range. Confidential.
Toxicity Data. Acute oral- >5 g/kg; Acute dermal: >3.16 g/kg;; Irritation: Skin—Moderate, Eye—Irritant.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Release to air and water. Disposal by secondary biological treatment.

P 86-156

Manufacturer. Hewlett-Packard Company.
Chemical. (G) Food black #2, new salt form.
Use/Production. (S) Consumer ink for thermal ink-jet printing on paper. Prod. range. 1,034—1,500 kg/yr.
Toxicity Data. Acute oral: 5 g/kg; Acute dermal: 10 mL/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant; Ames test: Non-mutagenic; Skin sensitizer: Sensitizer; Biological corrosivity: Non-corrosive.
Exposure. Manufacture: dermal, a total of 6 workers, up to 2 hrs/da, up to 260 da/yr.

Environmental Release/Disposal. Trace release to water. Disposal by POTW and incineration.

P 86-157

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Amine functional polyamide.

Use/Production. (S) Curing agents for epoxy resins. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 50 hrs/yr.

Environmental Release/Disposal. 1 to 5 kg/batch released to land. Disposal by incineration and landfill.

P 86-158

Manufacturer. Confidential.

Chemical. (G) Alkylchlorosilane.

Use/Production. (S) Intermediate. Prod. range. Confidential.

Toxicity Data. Ames test: Negative.

Exposure. Manufacture: dermal, a total of 2 workers, up to .25 hr/da, up to 0.5 da/yr.

Environmental Release/Disposal. 0.2 kg incinerated.

P 86-159

Manufacturer. Confidential.

Chemical. (G) Alkylchlorosilane.

Use/Production. (S) Intermediate. Prod. range. Confidential.

Toxicity Data. Ames test: Negative.

Exposure. Manufacture: dermal, a total of 2 workers, up to .25 hr/da, up to 0.5 da/yr.

Environmental Release/Disposal. 0.2 kg incinerated.

P 86-160

Manufacturer. The Dow Chemical Company.

Chemical. (G) Methylene diphenylene diisocyanate polyol perpolymer.

Use/Production. (S) Polyurethane elastomer for industrial components. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacturer: dermal and inhalation.

Environmental Release/Disposal. Less that 1 to <100 kg/batch released to air and water. Disposal by incineration and navigable waterway after treatment.

P 86-161

Manufacturer. Confidential.

Chemical. (G) Polymer of tall oil fatty acids with carbomonocyclic acids, polyols and a carbomoncyclic anhydride.

Use/Production. (G) Intermediate. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 88 workers, up to 8 hrs/da, up to 117 da/yr.

Environmental Release/Disposal. 0.1 to 134 kg/batch released to land. Disposal by incineration and landfill.

P 86-162

Manufacturer. Confidential.

Chemical. (G) Acrylated polymer of tall oil fatty acids with carbomonocyclic acids, polyols and a carbomonocyclic anhydride.

Use/Production. (G) Industrial coating having an open use. Prod. range. 215,000—835,00 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 42 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 4 to 110 kg/batch released to land. Disposal by incineration and landfill.

P 86-163

Manufacturer. Confidential.

Chemical. (G) Methacrylated polymer of tall oil fatty acids with carbomonocyclic acids, polyols and a carbomonocyclic anhydride.

Use/Production. (G) Industrial coating having an open use. Prod. range. 230,000—837,00 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 43 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 3 to 94 kg/batch released to land. Disposal by incineration and landfill.

P 86-164

Importer. Marubeni America Corporation.

Chemical. (G) 1 mol of caprolactone modified by hydroxyethyl methacrylate.

Use/Import. (G) Open, non-dispersive use. Import range. Confidential.

Toxicity Data. Ames test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-165

Manufacturer. Confidential.

Chemical. (G) Alkyd modified vinyl copolymer.

Use/Production. (S) Industrial high solids polymer for use in low V.O.C. coatings for machinery and metal parts. Prod. range. 36,000-72,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 4 hrs/da, up to 3 da/yr.

Environmental Release/Disposal. Less than ¼ of 15 kg/batch of released to air.

P 86-166

Manufacturer. Confidential.

Chemical. (G) Mixed glycol oligoesters of aromatic dicarboxylic acids.

Use/Production. (S) Component for polyurethane foam insulating material. Prod. range. 2,700,000–4,500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 18 workers, up to 4 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. 5 to 30 kg/batch released to control technology. Disposal by incineration.

P 86-167

Manufacturer. Confidential.

Chemical. (G) Mixed glycol oligoesters of aromatic dicarboxylic acids.

Use/Production. (S) Component for polyurethane foam insulating material. Prod. range. 2,300,000–4,500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 18 workers, up to 4 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. 5 to 30 kg/batch released to control technology. Disposal by incineration.

P 86-168

Manufacture. Confidential.

Chemical. (S) Polymer of phthalic anhydride, 2,2,4-trimethyl-1,3-pentanediol, 2,2¹-oxybis (ethanol), 2-ethyl hexanol, triphenylphosphite and Fascat 4100.

Use/Production. (S) Site-limited and industrial polymer for general metal finishing. Prod. range. 100,000–250,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 13 workers, up to 1 hr/da, up to 36 da/yr.

Environmental Release/Disposal. .5 to 40 kg/da released to air and/or land. Disposal by incineration or sanitary landfill.

P 86-169

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polymeric polyisocyanate polyol prepolymer.

Use/Production. (S) Industrial coating. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation.

Environmental Release/Disposal. Less than 1 kg/batch released to air. Disposal by off-site incineration.

P 86-170

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polymeric polyisocyanate polyol prepolymer.

Use/Production. (S) Industrial coating. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation.

Environmental Release/Disposal. Less than 1 kg/batch released to air. Disposal by off-site incineration.

P 86-171

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified tall oil polyalkylene polyamine.

Use/Production. (G) Asphalt emulsifier. Prod. range. Confidential.

Toxicity Data. Acute oral: 0.2 g/kg; Irritation: Skin Corrosive irritant; Eye-Severe.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by secondary waste water treatment plant.

P 86-174

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polymeric polyisocyanate polyol prepolymer.

Use/Production. (S) Industrial coating. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation.

Environmental Release/Disposal. Less than 1 kg/batch released to air. Disposal by off-site incineration.

P 86-175

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polymeric polyisocyanate polyol prepolymer.

Use/Production. (S) Industrial coating. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation.

Environmental Release/Disposal. Less than 1 kg/batch released to air. Disposal by off-site incineration.

Dated: November 18, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-27899 Filed 11-21-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2926-5]

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 November 11, 1985 Through November 15, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850436, Final, COE, MO, Hannibal Local Flood-Protection Plan, Mississippi River and Bear Creek, Marion County, Due: December 23, 1985, Contact: Dick Makinen (202) 272-0121.

EIS No. 850499, Draft, FHW, DE, US 13 Relief Route Construction, DE-7 to US 113/US 13, Kent, New Castle, Sussex Cos., Due: January 6, 1986, Contact: Gooden Warren (302) 734-5323.

EIS No. 850500, Draft, FAA, CO, Stapleton International Airport -Runway Expansion, Approval, Denver County, Due: January 21, 1986, Contact: Robert Bielek (303) 340-5546.

EIS No. 850501, Draft, CDB, IL, Decatur Historic District Development, Demolition, Rehabilitation and Construction, CDBG, Macon County, Due: January 6, 1986, Contact: H. P. Blus (312) 353-2977.

EIS No. 850502, Final, COE, WV, Island Creek Basin Flood Control Plan, Guyandotte River, Logan County, Due: December 23, 1985, Contact: K. Richard Edwards (304) 529-5634.

EIS No. 850503, Final COE, NV, Truckee Meadows (Reno-Sparks Metropolitan Area), Recreation and Flood Control Plan, Washoe County, Due: December 23, 1985 Contact: Allan Oto (916) 440-2360.

EIS No. 850504, Draft, AFS, MI, Ottawa National Forest, Land and Resource Management Plan, Due: February 28, 1986, Contact: Joseph Zylinski (906) 932-1330.

EIS No. 850505, Final, BLM, CA, Pacific Texas Pipeline Project, Construction and Operation, Due: December 23, 1985, Contact: William Haigh (714) 351-6428.

EIS No. 850506, Final, USA, LA, Fort Polk Multipurpose Range Complex, Construction and Operation, 5th Infantry Division (Mechanized), Vernon Parish, Due: December 23, 1985, Contact: Stephen Parris (318) 535-7008.

EIS No. 850507, Final, FHW, MA, Third Harbor Tunnel/I-90 Extension, I-93 to East Boston, Suffolk County, Due: December 23, 1985, Contact: Edwin Holahan (617) 494-2469.

Amended Notice

EIS No. 850480, Draft, COE, AZ, Clifton Flood Control Plan, San Francisco River, Greenlee County, Due: December 9, 1985, Published FR 11-8-85—Incorrect state.

Dated: November 19, 1985.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 84-27950 Filed 11-21-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2928-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 4, 1985 through November 8, 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 FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-FHW-K40149-CA, Rating LO, Pacific Coast Highway/CA-1 Widening, CA-55 to Golden West Street, 404 Permit, CA. Summary: EPA had no comments on the DEIS.

ERP No. D-HUD-F85070-IL, Rating E02, Near Loop Residential Development, Areawide Study, IL. Summary: EPA expressed environmental objections to the proposed rehabilitation project based on air quality and noise impacts and the potential presence of hazardous materials. Increased traffic may exacerbate existing air quality and noise problems. Additionally, asbestos in existing buildings and soil contamination by radioactive materials pose special problems which require further analysis in the EIS.

ERP No. D-SCS-D36102-WV, Rating EC1, Middle Grave Creek Watershed Protection and Flood Prevention Plan, 404 Permit, WV. Summary: EPA agrees with the recommended alternative, but identified concerns related to construction associated impacts which should be monitored or mitigated.

Final EISs

ERP No. FS-COE-E34025-AL, Frank Jackson State Park, Earth Fill Dam and Reservoir Construction, Additional

Information and Changes, 404 Permit, Lightwood Knot Creek, AL. Summary: EPA continues to believe that the magnitude of long-term environmental losses associated with this proposal would not meet EPA's guidelines for issuance of the Sect. 404 permit. Specifically, EPA believes that the impoundment of the Creek and the permanent loss of at least 680 acres of bottomland hardwood swamp are environmental impacts unacceptable in scope, severity, and significance. However, final disposition of this matter will be resolved only after the Corps of Engineers completes its comprehensive public interest review and issues a Record of Decision.

ERP No. F-COE-K61984-HI, Waikoloa Beach Resort Development, Excavation of a Recreational Lagoon and Fill of Anchialine Ponds, Sect. 10 and 404 Permits, HI. Summary: EPA rated the DEIS as "Category 3, Inadequate" because it inadequately assessed the project's potentially significant environmental impacts. Upon review of the FEIS, EPA is deferring a final NEPA decision until its evaluation of the practicable alternatives analysis.

ERP No. F-FHW-C40118-NJ, NJ-18 Freeway Completion, Sect. 3B and 3C Construction, Deal Rd. to Wayside Rd., 404 Permit, NJ. Summary: EPA now considers that all unresolved issues have been adequately addressed due to the fact that additional wetland mitigation measures have been agreed to since the FEIS was published.

ERP No. F-JUS-E81025-FL, Marianna Federal Correctional Institution and Federal Prison Camp, Construction and Operation, FL. Summary: EPA's review of the FEIS concentrated on wetland and water quality concerns. Most of these concerns were expressed in the earlier review and were adequately addressed in the FEIS, however, EPA recommended that the extent of wetlands involvement be clarified and that the proposed retention ponds be designed to provide treatment for the stormwater runoff as well as control peak flows.

ERP No. F-MMS-A02211-AK, 1985 N. Aleutian Basin OCS Oil and Gas Sale #92, Leasing, AK. Summary: EPA recommended that 118 tracts, or about 12% of the area identified for leasing in the Proposed Notice of Sale, be deleted. These tracts, all in the eastern portion of the lease sale area, represent tracts in which an oil spill would have a greater than one-in-five probability of reaching nearshore habitats along the Alaska Peninsula within 10 days. EPA also recommended additional measures or modifications to stipulations that would provide additional protection to sensitive biological resources in the lease sale area.

ERP No. F-OSM-G01008-NM, LaPlata Mine Mining and Transportation Corridor Plans, Approval, Permit, NM. Summary: EPA expressed no objection to the action as described in the FEIS.

ERP No. F-SCS-G36128-LA, Bayou Mallet Watershed Flood Prevention Project, Mermentau River Basin, 404 Permit, LA. Summary: EPA has not objection to the proposed action as described.

Dated: November 19, 1985.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 85-27955 Filed 11-21-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 15, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

OMB Number: 3060-0190

Title: Section 73.3544, Application to Obtain a Modified Station License

Action: Extension

Respondents: Radio and television broadcast station licensees

Estimated Annual Burden: 200 Respondents; 200 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-27873 Filed 11-21-85; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-3]

Window Notice for the Filing of FM Broadcast Applications

Released: November 15, 1985.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed on the attached appendix may be submitted for filing during the period beginning December 2, 1985, and ending January 2, 1986, inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Channel-221 A

Oakridge—OR
Reedsport—OR
Carrizo Springs—TX
Ruckersville—VA

Channel-225 C

Anchorage—AK

Channel-225 A

Cordova—AL
Montecito—CA
Smyrna—DE
Erath—LA
Belzoni—MS

[FR Doc. 85-27875 Filed 11-21-85; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1552]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

November 18, 1985.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking proceedings is published purusant to CFR 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject:
Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Rutland and West Rutland, Vermont, and Plattsburgh, New York) (MM Docket No. 84-718, RM's 4602 & 3866)

Filed by:
Richard R. Zaragoza & Neil S. Ende, Attorneys for Killington Community Broadcasting Corporation on 10-29-85.

Subject:
Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers. (CC Docket No. 84-800 (Phase I))

Filed by:

Jack E. Herington & Sherry F. Bellany, Attorneys for United States Telephone Association on 11–8–85.

Campbell L. Ayling & Saul Fisher, Attorneys for New York Telephone Company and New England Telephone and Telegraph Company on 11–12–85.

Richard McKenna & Gail L. Polivy, Attorneys for GTE Service Corporation and its affiliated domestic telephone operating companies on 11–12–85.

David S. Sather, Robert B. McKenna, Robert W. Barker & Kenneth D. Patrich, Attorneys from The Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company & Pacific Northwest Bell Telephone Company on 11–12–85.

Robert L. Barada, Susan E. Barisone, Mark P. Schreiber & Stanley J. Moore, Attorneys for Pacific Bell & Nevada Bell on 11–12–85.

Francine J. Berry, W. Preston Granbery & Richard J. Rawson, Attorneys for American Telephone and Telegraph Company on 11–12–85.

William C. Sullivan, Linda S. Legg, Mary W. Marks & Hope E. Thurrott, Attorneys for Southwestern Bell Telephone Company on 11–12–85.

Terry O. Oulundsen, Vice President-Regulatory Matters for The Southern New England Telephone Company on 11–12–85.

Ronald T. Lemay, Vice President-Gen. Counsel & James T. Roche, Attorney, for United Telephone System, Inc. on 11–12–85.

Thomas J. Reiman, Alfred Winchell Whittaker & Joyce L. Bernstein, Attorneys for Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company & Wisconsin Bell, Inc., on 11–12–85.

John F. Beasley, Vincent L. Sgrosso & G. Thomas Abernathy, Jr., Attorneys for BellSouth Corporation on behalf of South Central Bell Telephone Company and Southern Telephone and Telegraph Company on 11–12–85.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–27943 Filed 11–21–85; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Costa Armatori S.p.A., Costa International B.V., Milestone N.V. and Independent Continental Lines, Ltd., c/o Costa Cruises, One Biscayne Tower, Miami, Florida 33131

Dated: November 19, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–27927 Filed 11–21–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

November 18, 1985.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

Date: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

Address: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

For further information contact: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3822)

Proposal To Approve Under OMB Delegated Authority the Extension With Revision of the Following Report:

1. Report title: Report of Claims on Selected Foreign Countries by U.S. Branches and Agencies of Foreign Banks

Agency form number: FR 2029B

OMB Docket number: 7100–0064

Frequency: Semi-annually

Reporters: U.S. branches and agencies of foreign of banks

Small businesses are not affected.

General description of report: This information collection is voluntary [12 U.S.C. 3105(b)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

U.S. branches and agencies of foreign banks report their claims on foreign countries semiannually. The Federal Reserve System provides the data to the Bank for International Settlements for the semi-annual survey of the maturity of bank lending.

Board of Governors of the Federal Reserve System, November 18, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-27869 Filed 11-21-85; 8:45 am]

BILLING CODE 6210-01-M

Benson Investment Co.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21 (a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.23 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 13, 1985.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Benson Investment Company*, San Antonio, Texas; to engage *de novo* through its subsidiary, Bancshares Life Insurance Company, Phoenix, Arizona, in acting as reinsurer for credit life, and credit accident and life insurance that is directly related to an extension of credit by the bank holding company system pursuant to § 225.25(a)(9) of Regulation Y. This activity would be conducted in the state of Texas.

Board of Governors of the Federal Reserve System, November 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-27866 Filed 11-21-85; 8:45 am]

BILLING CODE 6210-01-M

Capital City Bank Group, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 16, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Capital City Bank Group, Inc.*, Tallahassee, Florida; to acquire 100 percent of the voting share of Farmers and Merchants Bank of Trenton, Trenton, Florida.

2. *First National Bancorp*, Gainesville, Georgia; to merge with First Jackson Bancorps, Jefferson, Georgia, thereby indirectly acquiring First National Bank of Jackson County, Jefferson, Georgia.

3. *Peoples National of LaFollette Financial Corp.*, LaFollette, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples National Bank of LaFollette, LaFollette, Tennessee.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *K.B.J. Enterprises, Inc.*, Sibley, Iowa; to acquire 26.88 percent of the voting shares of Landmands National Bank, Audubon, Iowa.

2. *The Viking Corporation*, Omaha, Nebraska; to merge with the Landmands Corporation, Kimballton, Iowa, thereby indirectly acquiring Landmands National Bank, Audubon, Iowa.

3. *The Viking Corporation*, Omaha, Nebraska; to acquire 33.29 percent of the voting shares of Sibley State Bank, Sibley, Iowa.

Board of Governors of the Federal Reserve System, November 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-27868 Filed 11-21-85; 8:45 am]

BILLING CODE 6210-01-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Wednesday, December 11, 1985 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC including buildings, memorials, parks, etc., also matters of design referred by other agencies of the government. Access for handicapped persons will be through the main entrance to the New Executive Office Building on 17th Street between Pennsylvania Avenue and H Street, NW.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC November 15, 1985.

Charles H. Atherton,

Secretary.

[FR Doc. 85-27851 Filed 11-21-85; 8:45 am]

BILLING CODE 6330-01

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 November 15, 1985.

Health Care Financing Administration

Subject: Non Certified Hospice Cost Analysis-HCFA-461—Revision (0938–0396)
Respondents: Non profit institutions, small businesses or organizations
OMB Desk Officer: Fay S. Iudicello

Public Health Service

Health Resources Service Administration

Subject: Health Systems Agency Application Guidelines for Designation and Related Reporting Requirements— Extension (0915–0085)
Respondents: State or local governments
Subject: Application Guidelines for Designation and Grant Award and Reporting Systems for State Health Planning and Development Agencies—Extension (0915–0058)
Respondents: State or local governments
OMB Desk Officer: Fay S. Iudicello

Office of Assistant Secretary for Health

Subject: Survey to Assess the Prevalence, Attitudes, Knowledge and Beliefs About Smoking Behavior Among the Adult Population—New
Respondents: Individuals or Households
OMB Desk Officer: Bruce Artim

Center for Disease Control

Subject: Supplemental Survey, Behavioral Risk Factor Surveillance System—New
Respondents: Individuals or Households
OMB Desk Officer: Fay S. Iudicello

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 November 18, 1985.

K. Jacqueline Holz;

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85–27897 Filed 11–21–85; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Immunology Devices Panel

Date, time, and place. December 9, 9 a.m. Rms. 703–727A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ–440) Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those persons desiring to make formal presentations should notify the contact person before November 28, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a tumor marker in vitro diagnostic assay.

Closed presentation of data. The committee will hear trade secret or confidential commercial information relevant to a premarket approval application for a tumor marker in vitro diagnostic assay. This portion of the meeting will be closed (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will review and discuss trade secret or confidential commercial information regarding a premarket approval application for a tumor marker in vitro diagnostic assay. This portion of the meeting will be closed (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) An open committee discussion, (3) A closed presentation of data, and (4) A closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures to expedite electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing

portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: November 16, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 84-28038 Filed 11-20-85; 2:36 pm]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Resources and Services Administration Federal Advisory Committees have been filed with the Library of Congress:

National Council on Health Planning and Development

Maternal and Child Health Research Grants Review Committee

National Advisory Council on Health Professions Education

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C., or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, North Building, Room 1436, 330 Independence Avenue, SW., Washington, D.C. 20201, Telephone (202) 245-6791.

Copies may be obtained from the following committee contacts:

National Council on Health Planning and Development—Ms. Diane McMenamin, Executive Secretary, National Council on Health Planning and Development, Health Resources and Services Administration, Room 9A-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6377.

Maternal and Child Health Research Grants Review Committee—Dr. Gontran Lamberty, Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 6-17, Parklawn Building, 5700 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2190.

National Advisory Council on Health Professions Education—Mr. Robert L. Belsley, Executive Secretary, National Advisory Council on Health Professions Education, Health Resources and Services Administration, Room 8C-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6880.

Dated: November 18, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85-27870 Filed 11-21-85; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Pacific Texas Crude Oil Pipeline; Final Environmental Impact Report/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of the final EIR/EIS for the Pacific Texas Pipeline Company Project.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), together with the Los Angeles Harbor Department, has prepared a Final Environmental Impact Report/Environmental Impact Statement (FEIR/EIS) for the Pacific Texas (Pactex) Compamy project.

The Pactex pipeline is a proposal of the Pacific Texas pipeline company. The proposal involves the construction of a crude oil tanker terminal in the Port of Los Angeles, an oil-storage tank farm at Midland, Texas, and a 1,030-mile long 42-inch diameter pipeline connecting the two. The tanker terminal would be located on a 115-acre landfill in the

Port's outer harbor. The Pactex pipeline would begin at the tanker terminal, pass near Palm Springs and Blythe, California, Phoenix and Tucson, Arizona, El Paso, Texas, and would end at Midland, Texas. The pipeline would transport approximately 900,000 barrels per day of crude oil from a variety of sources (primarily from Alaska).

Pacific Texas applied for a right-of-way grant from BLM on May 16, 1983. On November 19, 1984, an application for a development permit was filed with the Los Angeles Harbor Department. Pacific Texas applied to the Army Corps of Engineers, Los Angeles District, for a Section 10/404 permit for harbor deepening and dredging activities in the Port area on April 15, 1985 (permit application No. 85-97). This EIR/EIS serves as the NEPA compliance document for all three permits. The BLM and the Harbor Department served as co-leads in the preparation of the EIS. The Army Corps of Engineers and the U.S. Fish and Wildlife Service served as cooperating agencies.

A draft EIR/EIS was released for a 45-day public review on June 21, 1985. The draft described the implications of constructing and operating both the pipeline and the terminal facilities. It examined the impacts of dredging a 75-foot deep channel in the harbor, and of constructing the 115 acre landfill. The draft also assessed an alternative route through California's Coachella Valley, and two alternative configurations for the landfill island where the terminal is to be located. The analysis was focused on impacts related to significant areas of concern identified by agencies and by the public during eight public scoping meetings held in January and Febuary 1985. These included air quality, system safety, employment, economic feasibility, harbor operations, restoration, and cultural resources.

Eighty-three written comment letters were received during the public review. Additional oral comments were also taken at five public hearings, held in late July in San Pedro, Palm Springs, Phoenix, El Paso, and Midland. Those letters and oral comments are reprinted in this document, as are responses to each oral and written comment and minor necessary corrections.

This document has been prepared in an abbreviated format under Council on Environmental Quality Regulations (40 CFR 1503.4) and section 15132 of the California Environmental Quality Act. This document, in conjunction with the DEIR/EIS, constitutes the Final EIR/EIS.

Comments on the Final EIR/EIS are being solicited from public agencies and interested individuals and organizations.

DATE: The public comment period is open for 30 days through December 23, 1985.

ADDRESS: Comments on the final EIR/EIS should be submitted to the following address. Use of any other address may result in comments not being processed.

Mr. William Haigh, Bureau of Land Management, 1695 Spruce Street, Riverside, CA 92507.

A limited number of copies of the FEIS/EIS are available upon request at the following address:

California Desert District, Bureau of Land Management, 1695 Spruce Street, Riverside, CA 92507

Copies are also available for review at two other locations:

Bureau of Land Management, 2800 Cottage Way, Rm. E-2841, Sacramento, California 95825

Bureau of Land Management, 1725 Eye Street, NW., Suite 906, Washington, DC 20240

FOR FURTHER INFORMATION CONTACT: Gerald E. Hillier, District Manager, California Desert District, 1695 Spruce Street, Riverside, California.

Dated: November 13, 1985.

Ron Hofman,

Associate State Director.

[FR Doc. 85-27835 Filed 11-21-85; 8:45 am]

BILLING CODE 4310-40-M

Colorado; Draft Environmental Impact Statement for the James Creek Coal Preference Right Lease Application

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Draft Environmental Impact Statement (EIS) for the James Creek Coal Preference Right Lease Application.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management has prepared a Draft EIS on the James Creek Preference Right Lease Application (PRLA) of Rio Blanco County, Colorado, and copies are available for public review and comment. The Draft EIS also documents a BLM land use planning amendment for the PRLA and several adjacent coal leases. In addition, notice is also given that public heaings will be held and public comment is being sought on the Draft EIS.

DATES: Written comments on the Draft EIS will be accepted up to and including February 24, 1986.

Public meetings to receive oral and/or written comments on the Draft EIS will be held as follows:

January 15, 1986—7:30 p.m., White River Resource Area Office, 2 miles west of Meeker on Highway 64, Meeker, Colorado

January 16, 1986—7:30 p.m., The Grand Junction Hilton, 743 Horizon Drive (Horizon Dr. and I-70), Grand Junction, Colorado

ADDRESS: Written comments on the proposal in the document should be addressed to: Greg Goodenow, Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson, Craig, Colorado 81625; telephone (303) 824-8261.

Availability: Single copies of the Draft EIS are available from the Craig District BLM Office (address and phone listed above.)

FOR FURTHER INFORMATION CONTACT: Greg Goodenow, Bureau of Land Management, Craig District Office, 455 Emerson Craig, Colorado 81625; telephone (303) 824-8261.

SUPPLEMENTARY INFORMATION: This Draft EIS describes and analyzes the environmental impacts of the proposed leasing of Preference Right Lease Application (PRLA) C-0126998 located about 9 miles northeast of Meeker, Colorado, in Rio Blanco County, and in the Craig District, Bureau of Land Management. It also serves as the analysis for amending the White River Resource Area Management Framework Plan, by applying the unsuitability criteria (43 CFR 3460) to the project area. This PRLA is held by Consolidation Coal Company (Consol). Consol has proposed a 10 million ton per-year surface mine as the likely development of the PRLA, should the lease be issued. It is around this proposal that the analysis is centered.

The Alternatives considered in this EIS include:

No Action

Withdrawal/Just Compensation

Lease Exchange

Proposed Action (Consol's Current Proposal)

BLM's Preferred Alternative

If there is adequate interest, a public workshop will be held to discuss the impacts in more depth. Any interested parties should contact Greg Goodenow, Project Manager, at the above address, before December 20, 1985.

Dated: November 8, 1985.

Kannon Richards,

State Director, Colorado State Office.

[FR Doc. 85-27167 Filed 11-21-85; 8:45 am]

BILLING CODE 4310-JB-M

Filing of Plat Survey; New Mexico

November 22, 1985.

The plat survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on November 22, 1985.

The dependent resurvey of a portion of the east, north and west boundaries of the Nuestra Senora de la Luz de las Lagunitas Grant, a portion of the north boundary, of the rejected Miera y Pacheco and Padilla Grant, a portion of the east and west boundaries, the north boundary, a portion of the subdivisional lines and the subdivision of Sections, 2, 4 and 8, of Township 14 North, Range 3 West, New Mexico Principal Meridian, New Mexico, under Group 807 NM.

This survey was requested by the Area Director, Bureau of Indian Affairs, Albuquerque Area Office, Albuquerque, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 85-27861 Filed 11-21-85; 8:45 am]

BILLING CODE 4310-FB-M

[Desert Land Entry Applications U-51483, U-51484, U-51485, U-51486, U-51487, U-51488, U-51489, U-51490, U-51491]

Salt Lake District; Classification of Lands in Box Elder County, UT

AGENCY: Bureau of Land Managment, Interior.

ACTION: Classification of Lands as Unsuitable for Desert Land Entry.

SUMMARY: The following described land has been examined and is hereby classified as unsuitable for disposal under the Desert Land Entry Act of March 13, 1877 (19 Stat. 377; 43 U.S.C. 321-323) as amended.

T. 12N., R. 13W., S.L.M.,
Sec. 19: All;
Sec. 30: Lots 1 & 2, NE¼, E½NW¼.
T. 12N., R. 14W., S.L.M.,
Sec. 23: W½;
Sec. 24: S½;
Sec. 25: All;
Sec. 26: N½;
Sec. 35: N½.
Totalling 2,880 acres.

Reasons Supporting this Classification

1. The lands must be physically suitable or adaptable to the uses or purposes for which they are classified. In addition, they must have such physical and other characteristics as the regulations require them to have to qualify for a particular classification (43 CFR 2410.1(a)). These lands are only marginally physically suitable for cultivation. With respect to soils, the subject lands are not suited for irrigation. They have a high percentage of exchangeable sodium. Some have high eroison potential because of steep slopes and/or gravelly soil conditions.

2. All present and potential uses and users of the lands have been taken into consideration. All other things being equal, land classifications have attempted to achieve maximum future uses and minimum disturbance to or dislocation of existing users (43 CFR 2410.1(b)). To classify as suitable and dispose of these lands would break up a manageable block of public land and create several small isolated tracts which will be inefficient and ineffective to manage. It would also dislocate and adversely affect the existing users.

3. All land classifications must be consistent with Federal programs and policies, to the extent that those programs and policies affect the use or disposal of the public lands (43 CFR 2410.1(d)). It is the policy of the Bureau of Land Management that public lands be retained in Federal ownership unless, as a result of land use planning, it is determined that disposal of a particular tract or tracts will serve the National interest.

The following petitions for classification are hereby disapproved as they apply to the above described lands.

Name of petitioner	Type of petition
Julie A. Peterson	Desert Land Entry (U-51483).
Kevin Peterson	Desert Land Entry (U-51484).
Vicki F. Peterson	Desert Land Entry (U-51485).
Marlow H. Peterson	Desert Land Entry (U-51486).
Carla W. Peterson	Desert Land Entry (U-51487).
Hyrum D. Peterson	Desert Land Entry (U-51488).
Gertrude W. Tyler	Desert Land Entry (U-51489).
Mary D. Brown	Desert Land Entry (U-51490).
Lionel Brown	Desert Land Entry (U-51491).

For a period of 30 days from date of this publication comments on or protest to this proposed decision may be made. No particular form of comment or protest is required. Any information may be presented which is believed will assist the Bureau of Land Management in making a sound decision as to the proper classification or designation of these lands. Comments and protests should be sent to the District Manager, 2370 South 2300 West, Salt Lake City, Utah 84119.

The official environmental analysis/land report sets out the facts upon which this proposed decision is based. A copy of this report is available to be reviewed at the Salt Lake District Office at the above address. Phone is area code (801) 524-5348.

Dated: November 15, 1985.

Frank W. Snell,

Acting State Director.

[FR Doc. 85-27878 Filed 11-21-85; 8:45 am]

BILLING CODE 4310-DQ-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Assistance Under the Foreign Assistance Act in Fiscal Year 1986 to Costa Rica

Determination under section 620(q) of the Foreign Assistance Act of 1961, as amended ("the Act"), that it is in the national interest to furnish assistance under the Act in Fiscal Year 1986 to Costa Rica.

By virtue of the authority vested in me by section 620(q) of the Act, Executive Order 12163, as amended, and Delegations of Authority issued thereunder, I hereby determine that it is in the national interest to furnish assistance under the Act in Fiscal Year 1986 to Costa Rica, notwithstanding that the Government of Costa Rica is more than six months in default in payment to the United States of principal and interest on loans made under the Act.

This determination shall be reported to Congress and be published in the **Federal Register.**

Dated: October 30, 1985.

George P. Shultz,

Secretary of State.

[FR Doc. 85-27831 Filed 11-21-85; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: November 19, 1985.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate

transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Knouse Foods Cooperative, Inc.
(2) Peach Glen, PA 17306
(3) Peach Glen, PA 17306
(4) William H. Horner, Peach Glen, PA 17306

James H. Bayne,

Secretary.

[FR Doc. 85-27913 Filed 11-21-85; 8:45 am]

BILLING CODE 7035-01-M

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, address of principal office and state of incorporation: ConAgra, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Delaware corporation)

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices as listed below:

1. Adapt, Inc., 1050 Sansome St., Suite 500, San Francisco, CA 94111 (a California corporation)
2. Ag Chem, Inc., Box 67, Girdletree, MD 21829 (a Maryland corporation)
3. Agrichem, Inc., PO Box 506, Burlington, WA 98233 (a Washington corporation)
4. Alaska Packers Association, Inc., 150 Nickerson St., Suite 300, Seattle, WA 98109 (a Washington corporation)
5. Armour Food Express Company, 4318 S. 79th St., Omaha, NE 68127 (a Delaware corporation)
6. Atwood Commodities, Inc., 876 Grain Exchange Bldg., Minneapolis, MN 55415 (a Nebraska corporation)
7. Atwood-Larson Company, 876 Grain Exchange Bldg., Minneapolis, MN 55415 (a Minnesota corporation)
8. Balcom Chemicals, Inc., PO Box 1286, Greeley, CO 80631 (a Colorado corporation)
9. Berger and Company, 1050 Sansome Street, San Francisco, CA 94111 (a California corporation)
10. CAG Company, ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (an Oklahoma corporation)
11. CAG Leasing Company, 2001 Reliance Pkwy #A, PO Box 179, Bedford, TX 76021 (a Texas corporation)
12. Caribbean Basic Foods Company, GPO Box G-1960, San Juan, PR 00936 (a Nebraska corporation)
13. Central Valley Chemicals, Inc., PO Box 446, Weslaco, TX 78596 (a Texas corporation)
14. ConAgra Intenational, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Delaware corporation)
15. ConAgra Pet Products Company, 3902 Leavenworth St., Omaha, NE 68105 (a Delaware corporation)
16. CTC North America, Inc., 730 Second Avenue South, Minneapolis, MN 55402 (a Delaware corporation)
17. ConAgra Transportation, Inc., 5301 West Channel Rd., Catoosa, OK 74105 (an Oklahoma corporation)
18. ConAgra Poultry, Inc., 422 N. Washington, PO Box 1997, El Dorado, AR 7730 (a Delaware corportion)
19. AgriBasic Fertilizer Co., 700 East Hill Avenue, Knoxville, TN 37915 (a Delaware corportion)
20. Cropmate Company, 320 Embassy Plaza Building, Omaha, NE 68115 (a Nebraska corportion)
21. U.S. Tire, Inc., 3443 North Central Avenue, Phoenix AZ 85012 (a Delaware corportion)
22. Dixie Ag Supply, Inc., 1801 Old Montgomery Rd., Selma, AL 36701 (a Alabama corportion)
23. Florida Feed Milis, Inc., PO Box 2550, Jacksonville, FL 32202 (a Georgia corportion)
24. GA AG Chem, Inc., Empire Expressway, PO Box 1260, Swainsboro, GA 30401 (a Georgia corportion)
25. Geldermann, Inc., 440 S. LaSalle Street, One Financial Place, Floor 20, Chicago, IL 60605 (an Illinois corportion)
26. Geldermann Futures Management Corp., 440 S. LaSalle Street, One Financial Place, Floor 20, Chicago, IL 60605 (an Illinois corportion)
27. Geldermann Securities, Inc., 440 S. LaSalle Street, One Financial Place, Floor 20, Chicago, IL 60605 (an Illinois corportion)
28. Glendon Corprtion, 937 Haverford Road, Bryn Mawr, PA 19010 (a Pennsylvania corportion)
29. Grower Service Corp. (NY), 16713 Industrial Parkway, PO Box 18037, Lansing, MI 48901 (a New York corportion)
30. Hopkins Agrichemical Company, Inc., 537 Atlas Avenue, Madison, WI 53714 (an Illinois corportion)
31. Hess & Clark, Inc., 7th and Orange Streets, Ashland, OH 44805 (an Ohio corportion)
32. Loveland Industries, Inc., 2307 West 8th Street, Loveland, CO 80537 (a Colorado corportion)
33. Lynn Transportation Co., Inc., 422 N. Washington, PO Box 1997, El Dorado, AR 71730 (an Iowa corportion)
34. MHC, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (an Oregon corportion)
35. Mid Valley Chemicals, Inc., PO Box 446, Weslaco, TX 78596 (a Texas corportion)
36. Midwest Agriculture Warehouse Co., 725 S. Schneider St., Fremont, NE 68025 (a Nebraska corportion)
37. Molinos de Puerto Rico, Inc., GPO Box G-1960, San Juan, Puerto Rico 00936 (a Nebraska corportion)
38. M&R Distributing Company, PO Box E, West Highway 30, Grand Island, NE 68801 (a Minnesota corportion)
39. Northwest Chemical Corp., 4560 Ridge Road, NW., Salem, OR 97303 (an Oregon corporation)
40. Omaha Vaccine Co., Inc., 3030 L Street, Omaha, NE 68107 (a Nebraska corporation)
41. Ostlund Chemical Co., 1330 Northwest 40th, Fargo, ND 58102 (a North Dakota corporation)
42. Peavey Company, 730 Second Avenue South, Minneapolis, MN 55402 (a Minnesota corporation)
43. Peavey Canada Limited, 730 Second Avenue South, Minneapolis, MN 55402 (a Canada corporation)
44. Peavey Marts, Inc., 730 Second Avenue South, 730 Second Avenue South, Minneapolis, MN 55402 (a Minnesota corporation)
45. Platte Chemical Co., 150 South Main, Fremont, NE 68025 (a Nebraska corporation)
46. Public Grain Elevator of New Orleans, Inc., 730 Second Avenue South, Minneapolis, MN 55402 (a Louisiana corporation)
47. Pueblo Chemical & Supply Co., PO Box 1279, Garden City, KS 67846 (a Colorado corporation)
48. Scentry, Inc., 11806 East Riggs Road, Chandler, AZ 85224 (a Delaware corporation)
49. Snake River Chemicals, Inc., PO Box 1196, Caldwell, ID 83650 (an Idaho corporation)
50. Taco Plaza, Inc., 2001 Reliance Parkway, Suite A, Bedford, TX 76021 (a Texas corporation)
51. To-Ricos, Inc., PO Box 646, Aibonito, Puerto Rico 00609 (a Nebraska corporation)
52. Trans Agra International, Inc., 1525 Lockwood Road, Billings, MT 59101 (a Tennessee corporation)
53. Transbas, Inc., 1525 Lockwood Road, Billings, MT 59101 (a Tennessee corporation)
54. Tri River Chemical Company, Inc., PO Box 2641, Pasco, WA 99302 (a Washington corporation)
55. Tri State Chemicals, Inc., PO Box 1206, Hereford, TX 79045 (a Texas corporation)

56. Tri State Delta Chemicals, Inc., PO Box 369, Clarksdale, MS 38614 (a Mississippi corporation)
57. Tropmi Import Company, 5024 Uceta Road, PO Box 2819, Tampa, FL 33619 (a Florida corporation)
58. United Agri Products Financial Services, Inc., PO Box 1286, Greeley, CO 80631 (a Colorado corporation)
59. United Agri Products, Inc., 419—18th Street, Greeley, CO 80631 (a Colorado corporation)
60. United Agri Products Special Products, Inc., 13808 "F" Street, Omaha, NE 68137 (a Nebraska corporation)
61. VKG Commodities, Inc., 440 S. LaSalle St., One Financial Place, Floor 20, Chicago, IL 60605 (an Illinois corporation)
62. Westchem Agriculture Chemicals, Inc., 1525 Lockwood Road, Billings, MT 59101 (a Montana corporation)
63. Wholesale Veterinary Supply, Inc., 4801 Shepherd Trail, Rockford, IL 61131 (an Illinois corporation)
64. Woodward and Dickerson, Inc., 937 Haverford Road, Bryn Mawr, PA 19010 (a Pennslyvania corporation)
65. Woodward and Dickerson, Inc., PO Box 7048, Wilmington, DE 19803 (a Delaware corporation)
66. Yellowstone Valley Chemicals, Inc., 1525 Lockwood Road, Billings, MT 59101 (a Montana corporation)

1. Parent company and address of principal offices: The Kroger Co., 1014 Vine Street, Cincinnati, OH 45201.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation:

(i) Gateway Freightline, Inc., 200 Carver Lane, East Peoria, IL 61611, Ohio.

1. Parent corporation and address of principal office: New Enterprise Stone & Lime Co., Inc., New Enterprise, PA 16664.

2. Wholly-owned subsidiaries which will participate in the operations and States of incorporation:

(i) Valley Quarries, Inc. (Pennsylvania).

(ii) Martin Limestone, Inc. (Pennsylvania).

(iii) Union Equipment, Inc. (Pennsylvania).

(iv) Star Carriers, Inc. (Pennsylvania).

James H. Bayne,

Secretary.

[FR Doc. 85-27911 Filed 11-21-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-138X)]

Illinois Central Gulf Railroad Co.—Abandonment Exemption—in Henderson County, KY; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon 3.55 miles of line extending between milepost 10.0 and milepost 10.4 in Henderson, and between milepost 15.85 and milepost 19.0 at Wilson, in Henderson County, KY.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in wirting at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected ty the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective December 22, 1985, (unless stayed pending reconsideration). Petitions to stay must be filed by December 2, 1985, petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 12, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John H. Doeringer, 233 N. Michigan Avenue, Chicago, IL 60601.

If the notice of exemption contains false or misleading information, use of the exemption in void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 14, 1985.

By the Commission, Heber P. Hardy, Dirctor, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-27912 Filed 11-21-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-139X)]

Illinois Central Gulf Railroad Co.—Abandonment in Vanderburgh County, IN; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its lines of railroad between milepost 246.22 and milepost 246.64 in Evansville, IN and between milepost 3.32 of the McClain's Branch and the south end of the line near the Ohio River in Evansville, Vanderburgh County, IN.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective December 22, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by December 2, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 12, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John H. Doeringer, 233 N. Michigan Avenue, Chicago, IL 60601.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 12, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-27814 Filed 11-21-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

November 19, 1985.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was

published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Pub. L. 96–511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *and* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice, Agency Clearance Officer: Larry E. Miesse, 202/633–4312.

• Revision of a Currently Approved Collection

(1) Larry E. Miesse, 202/633–4312
(2) Federal Bureau of Investigation, Department of Justice
(3) LAW ENFORCEMENT OFFICERS KILLED
(4) DO–76, 76a, 76b
(5) On occasion
(6) State and local governments. Used to collect and exchange data regarding law enforcement officers killed in the United States. Summary statistics published annually.
(7) 150 respondents
(8) 83 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

• New Collection(s)

(1) Larry E. Miesse, 202/633–4312
(2) Office of Science and Technology, Drug Enforcement Administration, Department of Justice
(3) STATE AND LOCAL DRUG EVIDENCE DATA STUDY
(4) None
(5) One-time
(6) State and local governments. To determine nature and availability of drugs subject to control under Pub. L. 91–513, from State and local facilities. Data will be used to make decisions on enforcement activities and control scheduling.
(7) 150 respondents
(8) 171 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Federal Bureau of Investigation, Department of Justice
(3) ARSON INCIDENT REPORT
(4) DO–84
(5) On occasion
(6) State and local governments. Used to collect nationwide arson data from fire service agencies and other affiliates thereby fulfilling a Congressional mandate. Data will be published in comprehensive annual report to the Congress, the public, and to assist state and local jurisdictions for more effective arson awareness, prevention, detection and control.
(7) 102,000 respondents
(8) 25,500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

Larry E. Miesse,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 85–27951 Filed 11–21–85; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub.L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: December 10, 1985, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565.

Signed at Washington, D.C. this 19 day of November.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 85–27947 Filed 11–21–85; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letters Interpreting the Federal Unemployment Insurance law

The Employment and Training Administration interprets Federal law pertaining to unemployment insurance as part of the fulfillment of its role in administration of the Federal-State unemployment insurance system. As necessary, these interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to State Employment Security Agencies. The four UIPLs described below are considered appropriate for publication in the **Federal Register** in order to keep the public informed.

1. Unemployment Insurance Program Letter No. 32–83 and UIPL No. 32–83, Change 1:

Section 302(d) of the Job Training Partnership Act (JTPA), Pub. L. 97–300, provided that the acceptance of training under Title III of the JTPA ". . . shall be deemed to be acceptance of training with the approval of the State within the meaning of any other provision of Federal law relating to unemployment benefits." Unemployment Insurance Program Letters (UIPL) No. 32–83 explains the relationship between section 302(d), JTPA, and section 3304(a)(8) of the Federal Unemployment Tax Act which provides, as a condition for certain tax credits, that individuals in approved training may not be denied benefits. Change 1 to UIPL No. 32–83 clarifies the interpretation of JTPA contained in UIPL No. 32–83.

2. Unemployment Insurance Program Letter No. 12–85

This directive transmits to State Employment Security Agencies a Department of Labor decision on three experience rating issues resulting from conformity proceedings with Minnesota in 1984. It also modifies the Department's prior interpretation on the use of multiple wage bases in determining employer contribution rates. Attachments to UIPL No. 12–85 includes (1) the recommended decision of the Administrative Law Judge who presided at a hearing on the issues and (2) the final decision of the Under Secretary of Labor, dated October 29, 1984.

3. Unemployment Insurance Program Letter No. 30–85

This directive interprets section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) with respect to the denial of benefits to educational employees in crossover situations. A crossover situation arises when an employee of an educational institution or related organization changes his/her employment status at the end of a period between terms or at the end of a customary holiday recess after having worked in another capacity until the beginning of the between-terms or holiday recess period. Public Law 98–21 amended section 3304(a)(6)(A), FUTA, so as to increase crossover possibilities, making necessary an interpretation beyond that provided initially in UIPL No. 41–83.

4. Unemployment Insurance Program Letter No. 34–85

This directive interprets section 303(a)(1) of the Social Security Act as precluding a voluntary waiver of benefits pending the outcome of an employer-initiated appeal. An explanation that this interpretation is in line with the U.S. Supreme Court's decision in the *Java* case is included. However, claimants may be advised of the possibility of repaying an overpayment in the event that the appeal is successful and benefits are subsequently denied.

Dated: November 4, 1985.

Roger D. Semerad,

Assistant Secretary of labor.

Dated: June 29, 1983.

Expiration Date: June 30, 1984.

Directive: Unemployment Insurance Program Letter No. 32–83

To: All Employment Security Agencies

From: Royal Dellinger, Administrator for Regional Management

Subject: Acceptance of Training Opportunities under Job Training Partnership Act (JTPA)

1. *Purpose.* To inform SESAs that acceptance of training opportunities by eligible individuals pursuant to Section 302, JTPA, will be deemed acceptance of such training within the meaning or requirements in section 3304(a)(8), FUTA.

2. *References.* Section 302, JTPA; and section 3304(a)(8), FUTA.

3. *Background.* Paragraph (8) was added to section 3304(a), FUTA, in 1970 requiring, as a condition for State certification under section 3304(c), FUTA, that benefits shall not be denied to an otherwise eligible individual for any week during attendance of training with the State agency's approval. That means that an individual taking such training may not be found ineligible for benefits on grounds that he/she is not available for suitable work, is not making an active search for work, or has refused suitable work. A State must consider a trainee in an approved training course entitled to benefits if otherwise eligible, and it is prohibited from denying benefits thereafter for the causes specified above.

Ordinarily a State has discretion to determine what training is appropriate for a claimant for benefits, to establish the criteria for approval of a training course, and to adopt safeguards to assure that the claimant is actually attending approved training. Section 302, JTPA, however, preempts State agency discretion to approve training under specified conditions. Under section 302, a State "is authorized to establish procedures to identify substantial groups of eligible individuals who" have been terminated or received a notice of termination or layoff from employment; "are eligible for or have exhausted their entitlement to unemployment compensation, and are unlikely to return to their previous industry or occupation"; or are long-term unemployed with limited opportunities for work in the same or similar occupations where they reside. The State then "shall determine" what job opportunities exist for which such individuals can be retrained and "whether training opportunities for such employment opportunities exist or can be provided within the local labor market area." When such training opportunities are so identified, information about such opportunities "shall be made availabe to the individuals." Under subsection (d) —

The acceptance of training for such opportunities shall be deemed to be acceptance of training with the approval of the State within the meaning of any other provision of Federal law relating to unemployment benefits

4. *Interpretation.* Such "other provision of Federal law" is interpreted to include section 3304(a)(8), FUTA, as described above. All State laws contain, or should contain, provisions that parallel requirements of section 3304(a)(8). A State agency is prohibited, as a condition of a State's certification under section 3304(c), FUTA, from denying benefits to an individual who:

a. Is one of a substantial group of eligible individuals who has been terminated or received notice of termination from their jobs;

b. is one of a group which is eligible for unemployment benefits or has exhausted entitlement thereto; and

c. either, (1) is unlikely to return to the previous industry or occupation, or (2) long-term unemployed with limited opportunities for work in the same or similar occupations in the area where he/she resides; and

d. has accepted a training opportunity for which information was made available by the State to such group of individuals.

5. *Action Required.* Administrators are requested to review their laws to ensure that there is no obstacle to requiring acceptance of JTPA as approved training and to establish procedures for coordinating their activities with those of other State agencies or officials administering programs and training under JTPA in fulfillment of the requirements described above.

States that can not interpret their laws to implement this requirement should notify their regional office as to what corrective action will be undertaken to comply with the new requirement.

6. *Inquiries.* Direct questions to the appropriate regional office.

Dated: December 27, 1984.

Expiration Date: September 30, 1986.

Directive: Unemployment Insurance Program Letter No. 32–83, Change 1

To: All State Employment Security Agencies

From: Bert Lewis, Administrator for Regional Management

Subject: Clarification of Interpretation of Section 302(d) of the Job Training Partnership Act (JTPA)

1. *Purpose.* To respond to questions concerning the interpretation of section 302(d), (second sentence), JTPA, in relation to the requirements of section 3304(a)(8), Federal Unemployment Tax Act (FUTA), as stated in UIPL 32–83.

2. *References.* Section 302(d), JTPA; section 3304(a)(8), FUTA; and UIPL 32–83.

3. *Background.* UIPL 32–83 provided an interpretation of the requirement of the second sentence of Section 302(d), JTPA, relating to the payment of unemployment benefits to those accepting training under Title III of the JTPA. Questions have arisen as to whether the interpretation can be construed to mean that individuals who are or who become ineligible for unemployment benefits (for example, have exhausted all benefit rights) should be eligible again because of enrollment in JTPA training.

4. *Response.* The second sentence of section 302(d), JTPA, provides:

> The acceptance of training for such opportunities shall be deemed to be acceptance of training with the approval of the State within the meaning of any other provision of Federal law relating to unemployment benefits.

Section 3304(a)(8), FUTA, requires State unemployment compensation law to provide that:

> Compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week of training, of State law provisions relating to availability for work, active search for work, or refusal to accept work).

Section 3304(a)(8), FUTA, constitutes an "other provision of Federal law relating to unemployment benefits" within the meaning of section 302(d), JTPA. Therefore, if an individual is accepted for training under Title III of the JTPA, that person is deemed to have been accepted for training with the approval of the State within the meaning of section 3304(a)(8), FUTA.

However, neither JTPA nor section 3304(a)(8), FUTA, require that individuals who are ineligible for unemployment benefits must be paid benefits upon enrollment in approved training. For example, section 302, JTPA, permits individuals who have exhausted benefits to participate in training programs. These individuals remain ineligible for regular unemployment compensation because of State law regarding exhaustion of benefits, despite acceptance of JTPA training. Of course, individuals must satisfy other basic State law requirements for eligibility, such as establishing sufficient qualifying wages or showing good cause for voluntarily leaving employment. These requirements are not waived by any provision of FUTA or JTPA.

In conclusion, although the State agency is precluded from denying benefits to an individual for the reasons listed in section 3304(a)(8), FUTA, a State agency must apply other provisions of State law regarding eligibility and disqualification.

5. *Action Required.* Administrators are requested to review their laws to assure that none were enacted or are being interpreted to permit the payment of benefits to individuals enrolled in JPTA training who do not meet the eligibility requirements of the State UI law.

6. *Inquiries.* Direct questions to the appropriate regional office.

Date: March 25, 1985.

Expiration date: March 31, 1987.

Directive: Unemployment Insurance Program Letter No. 12–85

To: All State Employment Security Agencies

From: Bert Lewis, Administrator for Regional Management

Subject: Under Secretary's Decision in the 1984 Minnesota Conformity Proceedings

1. *Purpose.* To announce the Under Secretary's Decision in the 1984 Minnesota Conformity Proceedings and its implications.

2. *References.* Section 3303(a)(1), FUTA; UIPL 15–84; Under Secretary's Decision in Case No. 84–CCP–1, dated October 29, 1984.

3. *Background.* A recent decision by the Under Secretary of Labor ruled on three issues involving the interpretation of section 3303(a)(1), FUTA.

The first issue involved a section of Minnesota law which provides that employers with an experience ratio of less than one-tenth of one percent shall pay contributions on only the first $8,000 in wages paid to an individual during each calendar year. Other employers in Minnesota must pay contributions on a higher wage base. The Department of Labor contended that this Minnesota law provision is inconsistent with section 3303(a)(1), FUTA, because it creates two classes of employers and the lower taxable wage base for one class of employers is not a factor "bearing a direct relation to unemployment risk." The administrative law judge concluded that the lower wage base *is* directly related to unemployment risk because it is directly related to the employer's experience ratio. Consequently, the administrative law judge's recommended decision found this provision of Minnesota law to be in conformity with section 3303(a)(1), FUTA. The administrative law judge's recommended decision was adopted in the Under Secretary's Final Decision, made on October 29, 1984.

The second and third issues involved a section of Minnesota law which provides for certain limitations on contribution rate increases or decreases. Minnesota has a benefit ratio experience rating system. These rate increase or decrease limitations were also ruled on in the recent Under Secretary's decision. The administrative law judge concluded that the limitation on contribution rate increases or decreases for all employers is not in conformity with section 3303(a)(1), FUTA. He reasoned that this provision of Minnesota law can result in two employers with identical experience ratios in the same year paying contributions at different rates, thus allowing one employer to pay a reduced rate based on a factor not related to unemployment risk. He also concluded that the additional limitations permitted for a "small business employer" are not in conformity with section 3303(a)(1), FUTA. His reasoning was the same with regard to this limitation as it was with the general rate limitation. In addition, he reasoned that the size of a business is not a factor bearing a relationship to unemployment risk. The exception for small employers merely adds another improper factor to determining contribution rates. The administrative law judge's recommended decision on these two issues was also adopted in the Under Secretary's Final Decision.

The ruling on the rate limitation issues confirms previous interpretations concerning rate limitations in benefit ratio experience rating systems. Minnesota has decided not to appeal the Secretary's Final Decision. On December 21, 1984, the Minnesota Attorney General issued an opinion stating that the Minnesota section found out of conformity no longer has the force and effect of law. On January 18, 1985, Under Secretary of Labor Ford B. Ford, issued a Decision that he would sign the 1984 certification for the State of Minnesota.

4. *Revised Interpretation.* The Under Secretary's Decision requires a modification of the position stated in paragraphs 1 and 2 on page 2 and paragraph 5 on page 3 of UIPL No. 15–84, dated February 17, 1984. These parts indicated that employer contribution rates under an experience rating plan must be applied to a single taxable wage base during the same period, such as a tax year.

As a result of the Under Secretary's Decision, this interpretation is no longer absolute. It is not inconsistent to have more than one taxable wage base if the different wage bases are directly related to unemployment risk as determined by an employer's experience ratio.

5. *Action Required.* Administrators are requested to provide the above information to appropriate staff.

6. *Attachments*

I. Recommended Decision of Administrative Law Judge, dated August 24, 1984

II. Final Decision of Under Secretary of Labor, dated October 29, 1984

Final Decision

In the matter of State of Minnesota, Department of Economic Security; Case No. 84–CCP–1.

Pursuant to a Notice of Hearing published on March 6, 1984, 49 FR 8309, proceedings were instituted with respect to the conformity of the State of Minnesota with those requirements of the Federal Unemployment Tax Act (FUTA) codified at section 3303(a)(1) of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 3303(a)(1). This notice established the date for a hearing on the issues raised in the notice. By subsequent agreement of the parties, however, the hearing was cancelled, an Agreed Settlement of Facts was filed, and the case was submitted on briefs. On August 24, 1984, Administrative Law Judge John W. Earman issued a Recommended Decision on the issues raised in the notice. The matter is now before me for decision under section 3303(b)(1) of FUTA, 26 U.S.C. 3303(b)(1).

Specifically before me is whether subdivisions 2 and 8 of section 268.06 of the Minnesota unemployment compensation law, Minn. State section 268.06, subd. 2 and 8, meet the requirements of section 3303(a)(1) of FUTA. Under section 3303(a)(1) of FUTA, any reduced rate of contributions permitted by State laws must be based on experience with respect to unemployment or other factors having a direct relation to unemployment risk during not less than three consecutive years immediately preceding the computation date. This section has been consistently interpreted as required both that the experience of all employers in a State be measured by the same factor or factors bearing a direct relation to unemployment risk, and that any reduced rate of contribution be based on all, rather than a portion, of an individual employer's experience immediately preceding the computation date.

Subdivision 2 of section 268.06 of the Minnesota law permits employers, who have an experience ratio of less than one-tenth of 1 percent, to pay contributions only on the first $8,000 in wages. Since such employers pay contributions on lesser wages than other employers, a question arises as to whether this provision has the effect of measuring the experience of the employers with an experience ratio of less than one-tenth of one percent by a different factor than applicable to employers with greater experience ratios, and hence by a factor not having a direct relation to unemployment risk.

Subdivision 8 of section 268.06 of the Minnesota law provides that, if an employer's experience ratio (which is computed on the basis of the employer's experience for the 4 year period preceding the computation date) has increased or decreased within the current calendar year by more than 2½ percentage points, the increase or decrease shall be limited to 2½ percentage points. That subdivision also provides that small business employers are eligible for a further reduction in these percentage limitations to 1½ percentage points. With respect to subdivision 8, the issue is whether the 2½ percentage point limitation and the further reduction for small business employers result in a reduced rate of contribution which is based only on a portion of an individual employer's unemployment experience immediately preceding the computation date.

The administrative law judge recommended that I find that subdivision 2 of section 268.06 of the Minnesota unemployment compensation law conforms with the requirements of section 3303(a)(1) of FUTA. Specifically, the administrative law judge concluded that the applicable wage base is directly related to the employer's unemployment risk because it is directly related to the employer's experience ratio which is a factor bearing a direct relation to unemployment risk. With respect to subdivision 8 of section 268.06 of the Minnesota law, the administrative law judge recommended that I find the State of Minnesota in nonconformity with section 3303(a)(1) of FUTA. This recommendation was based on the administrative law judge's conclusion that both the 2½ percentage limitation on changes in the employer's employment ratio and the 1½ percentage limitation for small business employers result in reduced rates of contribution apart from any factor bearing on unemployment risk.

Upon review of the entire record in this case, I agree with the analysis and the conclusions of the administrative law judge. I, thus adopt his decision in its entirety. I, consequently, find that subdivision 2 of section 268.06 of the Minnesota unemployment compensation law is in conformity with section 3303(a)(1) of FUTA. I, however, find that subdivision 8 of section 268.06 of the Minnesota law no longer contains the provisions specified in section 3303(a)(1) of FUTA and that the State of Minnesota has, at least since March 31, 1982, failed to substantially comply with such section. Accordingly, subdivision 8 of section 268.06 of the Minnesota unemployment law will not be included in the listing of those laws which will be certified by me to the Secretary of Treasury on October 31, 1984 under section 3303(b)(1) of FUTA.

Ford B. Ford,

Under Secretary of Labor.

Dated: October 29, 1984 in Washington, D.C.

Certificate of Service

Case Name: State of Minnesota Department of Economic Security
Case No.: 84–CCP–1
Document: Final Decision

This is to certify that on October 29, 1984 a copy of the above-captioned document was mailed to the following persons.

Delores Longus.

Certified Mail

William H. DuRoss III, Associate Solicitor for Employment and Training Legal Services, U.S. Department of Labor, Room N–2101, 200 Constitution Ave., NW., Washington, DC 20210

Hubert H. Humphrey III, Attorney General, State of Minnesota, 1100 Bremer Tower, 7th Pl. & Minnesota Street, St. Paul, Minnesota 55101

William H. Walker, Esq., Office of the Solicitor, U.S. Department of Labor, Room N–2101, 200 Constitution Ave., NW., Washington, DC 20210

Peter C. Andrews, Assistant Attorney General, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101

Winston W. Borden, President, Minnesota Association of Commerce and Industry, 480 Cedar Street, 300 Hanover Building, St. Paul, Minnesota 55101

In the matter of State of Minnesota Department of Economic Security; Case No. 84–CCP–1.

Recommended Decision

Statement of the Case

This case arises under the Federal Unemployment Tax Act (FUTA), 26 U.S.C. 3301–3311. The statute imposes on employers an excise tax based upon the wages paid to employees. Credits are given for contributions to State unemployment funds which are certified for each 12 month period ending on October 31 of such year.

State participation in the Federal-State unemployment compensation

program is voluntary, but States choosing to participate must enact unemployment compensation laws consistent with federal requirements. The Secretary of Labor must annually certify to the Secretary of the Treasury the law of each State where he finds reduced State unemployment tax rates were allowable.

On June 23, 1982 the Acting Regional Administrator, Employment and Training Administration, U.S. Department of Labor advised the Commissioner, Minnesota Department of Economic Security (MDES) that H.F. No. 1, a bill signed into law by the Governor on March 31, 1982, raised numerous questions of conformity with Federal law. After an exchange of correspondence, MDES in a letter on January 14, 1983 indicated that, while they continued to disagree on the question of conformity, they would seek remedial legislation. When no such legislation had materialized after almost a year had passed, the Secretary of Labor advised the MDES and the Governor of Minnesota of the commencement of conformity proceedings. The MDES requested a hearing and, on March 6, 1984, the Notice of Hearing was published in the Federal Register, setting April 17, 1984 as the hearing date. By agreement of the parties the hearing was canceled and submission of the case on briefs was ordered. The Minnesota Association of Commerce and Industry was allowed to file an amicus curiae brief by Order dated May 22, 1984.

The parties and the Association have submitted briefs and reply briefs.

Issues Presented

I. Whether, with respect to certification of State laws on October 31, 1984, under section 3303(b)(1) of the Internal Revenue Code of 1954, 26 U.S.C. 3303(b)(1), subdivision 2 of section 268.06 of the unemployment compensation law of the State of Minnesota (the Minnesota Employment Services Law, Chapter 268, Minnesota Statutes 1980) has been amended so that, with respect to the 12-month period ending on such October 31, the Minnesota law no longer contains the provisions specified in section 3303(a)(1) of the Internal Revenue Code of 1984, 26 U.S.C. 3303(a)(1) or the State has, with respect to such 12-month period, failed to comply substantially with any such provision.

II. Whether, with respect to certification of State laws on October 31, 1984, under section 3303(b)(1) of the Internal Revenue Code of 1954, 26 U.S.C. 33303(b)(1), subdivision 8 of section 268.06 of the unemployment compensation law of the State of Minnesota, *supra*, has been amended so that, with respect to the 12-month period ending on such October 31, the Minnesota law no longer contains the provisions specified in section 3303(a)(1) of the Internal Revenue Code of 1954, 26 U.S.C. 3303(a)(1), or the State has, with respect to such 12-month period, failed to comply sustantially with any such provision.

Agreed Facts

The parties agreed to the following facts:

1. During the 1982 first special session of the Minnesota General Assembly, the Minnesota legislature passed H.F. No. 1.

2. This bill was signed into law by the Governor of Minnesota on March 31, 1982.

3. H.F. No. 1 amended, *inter alia*, subdivisions 2 and 8 of section 268.06 of the unemployment compensation law of the State of Minnesota, Minn. Stat. section 268.06, subd. 2, 8, relating to experience rating of employers.

4. The State of Minnesota Department of Economic Security submitted a certified copy of H.F. No. 1 to Steven M. Singer, Acting Regional Administrator in Chicago for the Employment and Training Administration ("ETA"), U.S. Department of Labor.

5. In a June 23, 1982 letter to Mr. Rolf Middleton, Commissioner, MDES, Mr. Singer apprised MDES it was ETA's position that H.F. No. 1 raised numerous questions of conformity with federal law requirements and attached a memorandum discussing these conformity issues. This memorandum specifically raised the conformity questions relating to subdivisions 2 and 8 of section 268.06 which are at issue in this case.

6. In a July 9, 1982 response to Mr. Singer, Mr. Middleton affirmatively rejected ETA's comments on section 268.02, subdivisions 2 and 8. In this letter, Mr. Middleton articulated the State's reasons for believing these subdivisions did not raise conformity issues.

7. Mr. Singer responded in a September 30, 1982 letter to Mr. Middleton. This letter expressed ETA's disagreement with MDES's position on the conformity issues raised by section 268.06, subdivisions 2 and 8. Mr. Singer attached a memorandum further elaborating on the conformity problems raised by those subdivisions.

8. In a January 14, 1983 letter to Mr. Singer, Ms. Barbara Beerhalter, the new Commissioner of MDES, stated that MDES continued to disagree with ETA on the question of conformity issues but stated that the State agency would seek remedial legislation that would remove the provisions at issue. Nearly a year later, no such legislation had materialized.

9. On December 29, 1983, Raymond J. Donovan, Secretary of Labor, wrote to Ms. Beerhalter to notify MDES of the commencement of conformity proceedings against the State of Minnesota under section 3303(b)(3) of the Federal Unemployment Tax Act ("FUTA"). This notice identified the specific issues in question and offered the State agency an opportunity for a hearing on the questions raised.

10. On January 12, 1984, Ms. Beerhalter, by letter, requested that a hearing be scheduled.

11. In a February 29, 1984 letter to Ms. Beerhalter, Secretary Donovan sent MDES a copy of the Notice of Hearing and Rules of Procedure governing these conformity proceedings.

12. On March 6, 1984, the Notice of Hearing was published in the Federal Register, 49 FR 8309–8311. The Notice of Hearing set April 17, 1984 as the hearing date.

13. Subsequently, upon agreement of the parties, the hearing was canceled and the case was submitted on briefs.

Findings and Conclusions

Section 3303(a)(1) of Tile 26, United States Code, provides in pertinent part:

(a) State Standards.—A taxpayer shall be allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) no reduced rate of contributions * * * is permitted to a person * * * having individuals in his * * * employ except on the basis of his * * * experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than 3 consecutive years immediately preceding the computation date. * * *

* * * * *

26 U.S.C. 3303(a)(1) affords the taxpayers a credit against the Federal tax for any reduced rate of contributions permitted by State law. However, the reduced rate must be based on factors bearing a direct relationship to unemployment risk.

The State of Minnesota allows for a reduced rate of contribution based on the employer's "experience ratio," [1] which the Department of Labor concedes is a factor "bearing a direct relation to unemployment risk".

Minn. Stat section 268.06, subd. 2 (Supp. 1983) provides:

[1] Minn. Stat. section 268.06, sub. 6(b)(1982).

Each employer shall pay contributions equal to two and seven-tenths percent for each calendar year prior to 1985 and 5⅝ percent for 1985 and each subsequent calendar year of wages paid and wages overdue and delayed beyond the usual time of payment from him with respect to employment occurring during each calendar year, except as may be otherwise prescribed in subdivision 3a and 4. *Each employer who has an experience ratio of less than one-tenth of one percent shall pay contributions on only the first $8,000 in wages paid and wages overdue and delayed beyond the usual time of payment to each employee with respect to employment occurring during each calendar year.* (Emphasis added.)

The Department contends that the last sentence of this subdivision violates section 3303(a)(1) of Futa, for the following reasons. Two classes of employer's are created, those with experience ratios of less than 0.1% and those with experience ratios of 0.1% or more. The classification determines which taxable wage base is applicable to a particular employer. Since the lower taxable wage base is not a factor "bearing a direct relation to unemployment risk", the subdivision is inconsistent with section 3303(a)(1) of FUTA, according to the Department.

The Department is in error. the Minnesota system classifies employer's by their experience ratio, which is a factor bearing a direct relation to unemployment risk. The employers particular classification next determines which wage base is applicable. The applicable wage base is directly related to the employer's experience ratio and thus is directly related to the employer's unemployment risk.

The use of a two level taxable wage base is not a factor in determining low risk or high risk employers, rather, it is a means of rewarding employer's *who have already been determined to be* low risk employers.

The reward system bears a direct relationship to unemployment risk. Those employers with an experience ratio of less than 0.1% use the $8,000 wage base; those with an experience of 0.1% or more use a flexible wage base. The major thrust of the Department's argument is the dramatic results that occur for two similarly situated employers, one falling just below the 0.1% line and the other, just above the line. The results are further enhanced because of Minnesota's practice of rounding off the experience ratio calculation to the nearest one-tenth of one percent. The Department's argument is irrelevant. Section 3303(a), in substance, allows an employer to be rewarded by a reduced rate of contribution if the reduction is tied to unemployment risk. However, the amount and the exact nature of the reward is not stated in section 3303(a)(1). A state is permitted to name its own reward. In the instant case, Minnesota has chosen to confer a substantial benefit for those employer's falling below the 0.1% line. It is, in fact, a significant motivation to employers to reduce their experience ratios.

In any instance of line drawing, those cases falling near the line can produce dramatic results, as the Department's example in its brief demonstrates. However, "horrible example" cases are an inevitable consequence of legislative line drawing under any circumstance. If more exacting parameters of a tax benefit are needed, they must be set by Federal legislation. Therefore, subdivision 2 of section 268.06 of the Minnesota Unemployment Compensation Law is found to comply with section 3303(a)(1) of FUTA.

Subdivision 8 of section 268.06 of the Minnesota law provides, in part, as follows:

For each calendar year the commissioner shall determine the contribution rate of each employer by adding the minimum rate to the experience ratio, except that if the ratio for the current calendar year increases or decreases the experience ratio for the preceding calendar year by more than one and one-half percentage points for 1982; and 2½ percentage points for 1983 and each year thereafter, the increase or decrease for the current year shall be limited to one and one-half percentage points for 1982; and 2½ percentage points for 1983 and each year thereafter, provided that a small business employer shall be eligible, upon application, for a reduction in the limitation to 1½ percentage points for 1983 and each year thereafter. "Small business employer" for the purpose of this subdivision means an employer with an annual covered payroll of $250,000 or less, or fewer than 20 employees in three of the four quarters ending June 30, of the previous calendar year.

* * * * *

No employer first assigned an experience ratio in accordance with subdivision 6, shall have his contribution rate increased or decreased by more than one and one-half percentage points for 1982; and 2½ percentage points for 1983 and each year thereafter over the contribution rate assigned for the preceding calendar year in accordance with subdivision 3a, provided that a small business employer shall be eligible, upon application, for a reduction in the limitation to 1½ percentage points for 1983 and each year thereafter.

Subdivision 8 places fixed percentage limitations on annual employer contribution rate increases and decreases. The State "notes" that a rate increase limitation has been in effect since 1975. It has failed to indicate the legal significance of that fact. There has been no showing that the State relied on a representation or changed its position to its detriment because the Department failed to act earlier. There is no reason the Department should now be estopped from questioning the state procedure.

States are permitted to establish maximum and minimum contribution rates. Minnesota argues that those limitations are the same as limitations on annual increases and decreases and the latter should therefore be permitted. Its analogy is incorrect. A State may set a maximum rate of contribution and the maximum rate is, in effect, a standard rate of contribution.

Once a standard rate is set, section 3303(a)(1) of FUTA requires that any procedure for reducing that rate below the standard, be based on unemployment risk factors. Thus section 3303(a)(1) does not speak to setting a maximum of standard rate or contribution, the section only has application after a maximum rate has been set.

Likewise, section 3302(a)(1) does not apply to establishing a minimum rate of contribution. Section 3303 applies only if a reduction in contribution rates exists. A minimum rate of contribution prohibits a reduction rate from existing below the cutoff line.

Section 3303 has clear application to limiting increases and decreases in contribution rates. Two employers with identical experience ratios in 1984 should pay the same rate of contribution. However, under the State law, the contribution rate of one of the employers may be artificially limited because that employer's experience ratio had substantially increased from 1983. While both employers have been rated equal as to unemployment risk in the current year, under the State provision, one employer would pay a reduced rate of contribution, apart from any factor bearing on unemployment risk, in contravention of section 3303.

Minnesota asserts that the limitation on an increase in rate for one employer is offset by a corresponding limitation on rate decrease for another employer. Thus "the overall effect is to accurately reflect the experience of all Minnesota employers because the limitations offset and cancel each other." Section 3303 does not address employer's as a whole, it applies to the individual taxpayer. Each taxpayer or employer must be viewed independently in analyzing compliance with the Section Thus, the State argument fails.

Subdivision 8 also creates a special fixed percentage rate limitation for "small business employers". As the above discussion illustrates fixed increase and decrease limitations are, in

general, improper. The exception for small business employers merely adds another improper factor to determining contribution rates. There has been no showing that the size of an employer's business is a factor bearing a relationship to unemployment risk. Minnesota's argument that any economic benefit to small businesses aids their chances of survival and thus has a direct bearing on unemployment, is tenuous and flies in the face of the clear mandate of section 3303. Accordingly the small business employers limitation is also found to violate section 3303 of FUTA.

Recommended Order

1. Subdivision 2 of section 268.06 of the Minnesota unemployment compensation law is found to conform with section 3303 (a)(1) of the Federal Unemployment Tax Act.

2. Subdivision 8 of section 268.06 of the Minnesota unemployment compensation law does not conform with the requirements of section 3303(a)(1) of the Federal Unemployment Tax Act and consequently the State of Minnesota should not be included in the October 31, 1984 listing of the States with respect to which certifications are made under section 3303(b)(1) of the Internal Revenue Code of 1954.

Dated: August 24, 1984 in Washington, D.C.

John W. Earman

Administrative Law Judge.

Service Sheet

Case Name: State of Minnesota Department of Economic Security
Case No.: 84-CCP-1
Title of Document: Recommended decision

I hereby certify that a copy of the above document was mailed to the following parties on August 24, 1984.

Karen A. Tanavage

Legal Technician.

William H. DuRoss III, Associate Solicitor for Employment and Training Legal Services, U.S. Department of Labor, Room N-2101, 200 Constitution Avenue, NW., Washington, DC 20210
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Hubert H. Humphrey III, Attorney General, State of Minnesota, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101

Date: July 12, 1985.
Expiration Date: March 31, 1987.

Directive: Unemployment Insurance Program Letter No. 30-85
To: All State Employment Security Agencies
From: Barbara Ann Farmer Acting Administrator for Regional Management
Subject: Denial of Benefits to Educational Employees in Crossover Situations

1. *Purpose.* To inform State Employment Security Agencies (SESAs) of the requirements of section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) regarding the denial of benefits in crossover situations (change in employment status) to educational employees during customary vacation periods or holiday recesses ("within terms") and during periods between terms.

2. *References.* Public Law (P.L.) 98-21, UIPL No. 41-83, UIPL No. 18-78, and Supplement 3, *1976 Draft Legislation*, dated May 6, 1977.

3. *Background.* The crossover situation was first explained on page 7 of Supplement 3, *1976 Draft Legislation.* It arises when an educational employee working in one capacity receives assurance of continued employment in the second of two academic periods in the other capacity encompassed by section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA). For example, if a teacher (a person serving in a "professional" capacity) receives assurance that at the end of the Christmas holidays recess his/her employment will be continued in January, but as a teacher's aide (i.e., in a "nonprofessional" capacity) rather than as a teacher, a crossover will occur if the teacher goes on to the new job.

Additional crossover questions arose with the passage of P.L. 98-21 which required States to implement clauses (iii) and (iv) of section 3304(a)(6)(A), FUTA, and introduced a new optional clause (v). Clause (iii) requires denial of benefits based on services performed by both professional and nonprofessional employees of educational institutions during within terms periods.

Clause (iv) requires denial of benefits both between and within terms based on services performed in an educational institution while in the employ of an educational service agency. Finally, clause (v) permits States to apply the same denial provisions to services provided to or on behalf of an educational institution (e.g., by local police crossing guards).

Clause (iii) of section 3304(a)(6)(A), FUTA, continues to be interpreted as requiring denial of benefits during within terms periods in crossover situations, although denial in crossover situations arising between terms is still precluded in accordance with the established interpretation of clauses (i) and (ii). However, two new questions which relate to clauses (iv) and (v) are: (1) Does within terms crossover denial apply to those providing services to or on behalf of an educational institution (the optional clause (v))? (2) Does either the between or within terms denial apply when the crossover is not from one capacity to another but from one type of employer (e.g., an educational institution) to another type of employer (e.g., a city agency as a provider of services to or on behalf of an educational institution)?

4. *Interpretation.*

a. *Clause (v) within terms crossover situations.* If clause (v) of section 3304(a)(6)(A), FUTA, is implemented, employees providing services to which section 3309(a)(1) applies (i.e., services to governmental entities and nonprofit organizations) who are providing services to or on behalf of an educational institution *must* be denied benefits during within terms periods when crossing over from one capacity to the other. This interpretation is based upon: (1) The language of clause (iii) which provides for denial with respect to *any* services described in either of the first two clauses; (2) the language of clause (v) which provides denial under the same circumstances as described in clauses (i) through (iv); and (3) the interpretation of clause (v) given in UIPL No. 41-83 which states on page 4 that ". . . if adopted, the provision must be accepted in toto and must be applied equally to all classes of services. . . ."

b. *Employer crossover situations.* Denial of benefits to educational employees, either between terms or within terms, is *not permitted* under section 3304(a)(6)(A), FUTA, when the claimant is crossing over from one type of employer to another. Clauses (i), (ii), and (iii) clearly require reasonable assurance of continued employment with the same type of employer (i.e., an educational institution) as a condition for denial during a period between or within terms. Clause (iv) requires denial ". . . as specified in clauses (i), (ii), and (iii) . . . ," while clause (v) permits denial ". . . under the same

circumstances as described in clauses (i) through (iv)
. . ." "As specified" and "same circumstances" are interpreted as precluding denial unless there is reasonable assurance of continued employment with the same type of employer, an interpretation that is consistent with existing and previous interpretations of clauses (i), (ii), and (iii), section 3304 (a)(6)(A), FUTA.

5. *Action Required.* SESAs should reexamine their State's unemployment insurance law to determine whether its between and within terms denial provisions, implementing the exception clauses under section 3304(a)(6)(A), FUTA, are consistent with the above interpretations and seek corrective legislation wherever necessary.

6. *Inquiries.* Questions should be directed to the appropriate regional office.

Date: September 12, 1985.

Expiration Date: March 31, 1987.

Directive: Unemployment Insurance Program Letter No. 34–85

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Acting Administrator for Regional Management

Subject: Voluntary Waiver of Benefit Rights by a Claimant Pending the Outcome of an Employer Initiated Appeal

1. *Purpose.* To reaffirm the interpretation that benefits may not be delayed once a determination of entitlement has been made even if the claimant voluntarily agrees to a waiver of benefits pending the outcome of an employer initiated appeal.

2. *References.* Section 303(a)(1), SSA; UIPL 1126, "The *Java* Decision," dated June 14, 1971.

3. *Background.* The U.S. Supreme Court's Java Decision (*California Human Resources Department v. Java*, 1971) interpreted the "when due" requirement in section 303(a)(1) of the Social Security Act as ". . . the time when payments are first administratively allowed as a result of a hearing of which both parties have notice and are permitted to present their respective positions; . . ." As a result of this decision, State law and procedure must provide for:

(1) Paying benefits promptly, after a determination has been made in the claimant's favor, regardless of the pendency of the appeal period or of any appeal that has been taken from the determination; and

(2) Providing reasonable notice to both the claimant and employer of the time and place of the predetermination fact-finding hearing.

A question has arisen in one State as to whether a State may, consistent with the "when due" requirements of section 303(a)(1), SSA, as interpreted by the Java Decision, provide for a *voluntary* waiver by the claimant of his/her rights to benefits pending the outcome of an appeal.

Because this question has broad applicability, this UIPL is being issued in response to the question.

4. *Interpretation.* Any deferral of receipt of benefits pending an appeal of the determination which awarded benefits is inconsistent with section 303(a)(1), SSA, even where the deferral is completely voluntary on the claimant's part. Section 303(a)(1) of the SSA, requires States to provide "such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to ensure full payment of unemployment compensation *when due.*" (Emphasis added.) Similarly, sections 303(a)(5), SSA, and 3304(a)(4), FUTA, which mandate the withdrawal of State unemployment fund monies solely "in the payment of unemployment compensation," similarly require full payment of such compensation when due.

A voluntary waiver of benefits by a claimant pending the outcome of an appeal does not change the "when due" requirement. Should the claimant's eligibility be affirmed upon appeal, the voluntary waiver of benefits would become an improper waiver of benefits "due" during the period of appeal. Further, it could be very difficult, if not impossible, to determine whether a claimant given a form to waive benefits voluntarily signed it of his/her own free will.

One approach to implement this policy which would safeguard the claimant's right to payment "when due" would be to advise the claimant in a written statement included with his UI benefit check that his determination of eligibility has been appealed and that any amounts received by him while the appeal is pending might be subject to recovery by the State agency if that determination is reversed. In this way, the claimant can decide for himself whether to spend or save the monies received in benefits, without undue pressure from the agency.

5. *Reaffirmation.* In summary, under Federal requirements:

(a) unemployment benefits must be paid "when due" in line with the requirements of section 303(a)(1), SSA, and the Supreme Court *Java* decision; and

(b) a voluntary system whereby claimants can defer receipt of benefits due pending the outcome of an employer initiated appeal is an improper waiver of benefit rights which violates the "when due" requirement and sections 303(a)(5), SSA, and 3304(a)(4), FUTA.

6. *Action Required.* SESAs are requested to review their procedures and make any changes needed to conform with this policy interpretation.

7. *Inquiries.* Direct inquiries to appropriate regional office staff.

[FR Doc. 85–27946 Filed 11–21–85; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M–85–127–C]

Emery Mining Corp.; Petition for Modification of Application of Mandatory Safety Standard

Emery Mining Corporation, P.O. Box 310, Huntington, Utah 84528, has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Cottonwood Mine (I.D. No. 42–01944) and its Deer Creek Mine (I.D. No. 42–00121), both located in Emery County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the belt haulage entries not be used to ventilate active working places.

2. Petitioner states that application of the standard would result in a diminution of safety because the stability of roof and ribs under deep cover and multiple seam mining have a direct relation to the number of entries opened: the fewer entries opened, the more stable the roof and ribs and the less likely are pillar and crib crushes, squeezes, floor heaves, overrides and rib rolls. Use of two entries would also result in ventilation, fire control, and escapeway benefits.

3. As an alternate method, petitioner proposes to develop a two-entry system of mining for a longwall panel development in which the belt haulage entry would act as a return air course, and for longwall panel retreat mining in which the belt haulage entry would act as intake air course for longwall face ventilation.

4. In support of this request, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide detection system would be installed in all belt entries used as

intake or return air courses and at each belt drive and tailpiece located in intake air courses except in specified situations. The monitoring devices would be capable of giving warning of a fire for four hours; a visual alert signal would be activated when the carbon monoxide level is 10 parts per million (ppm) above ambient air and an audible signal at 15 ppm above ambient air. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal would be activated at an attended surface location where there is two-way communication. The carbon monoxide system would be capable of identifying any activated sensor and monitoring electrical continuity.

5. If the carbon monoxide monitoring system is deenergized, qualified persons would patrol and monitor the belt conveyor using hand-held carbon monoxide detecting devices.

6. Stoppings in all longwall development and retreat entries would be constructed of solid block with mortared joints.

7. For all longwall panels, a safe passageway under supported roof through tailgate entries or bleeders to a mine exit would be provided for emergencies. The passageway would be examined weekly by a qualified person. One hour self-contained self rescuers would be carried by each person on a longwall panel or stored near the stageloader and stored on or near the face of the tailgate side of all longwall panels.

8. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 23, 1985. Copies of the petition are available for inspection at that address.

Dated: November 13, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-27944 Filed 11-21-85; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

[V-85-2]

Amax Lead Company of Missouri

AGENCY: Occupational Safety and Health Administration, Labor Department.

ACTION: Notice of Change of Hearing Date on Application for Permanent Variance.

SUMMARY: This notice announces a change of the hearing date of the application of AMAX Lead Company of Missouri for a permanent variance from Table II of the standard prescribed in 29 CFR 1910.1025(f)(2). The variance application concerns the limitation on use of half-mask, air-purifying respirators to areas where the lead concentration in air is less than 10 times the permissible exposure limit (PEL).

The notice announcing the application for a permanent variance was published in the **Federal Register** on April 16, 1985 (50 FR 15004). The notice of hearing on that application, which announced the date and place for the hearing, summarized the record to date, set forth the issues for the hearing, and the procedures for participation, was published in the **Federal Register** on October 8, 1985 (50 FR 41039). This notice announces a deferral of that hearing date from December 4, 1985 to February 25, 1986, by order of the hearing examiner, the Honorable Daniel J. Roketenetz.

DATES: The hearing will begin at 9:30 a.m. on February 25, 1986, at the Federal Building, Courtroom No. 3, Room 516, U.S. Court of Appeals, U.S. Courthouse and Custom House, 1114 Market Street, St. Louis, Missouri 63101.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, U.S. Department of Labor, Room N-3656, Third Street and Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-7193.

Authority: This document was prepared under the direction of patick R. Tyson, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, D.C. 20210 (Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911; and Secretary of Labor's Order No. 9-83 (48 FR 35736)).

Signed at Washington, DC, this 18th day of November, 1985.

Patrick R. Tyson,

Acting Assistant Secretary.

[FR Doc. 85-27945 Filed 11-21-85; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL SCIENCE FOUNDATION

NSF Advisory Committee on Merit Review; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: NSF Advisory Committee on Merit Review.

Date and Time: December 9, 1985—9 a.m. to 5 p.m.

Place: Room 1242-A, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Carlos Kruytbosch, Acting Head, Science Indicators Unit, National Science Foundation Washington, DC 20550, (202) 634-4682. Anyone planning to attend this meeting should notify Dr. Kruytbosch

Summary Minutes: Dr. Carlos Krytbosch, National Science Foundation 1800 G Street, NW., Room L-611, Washington, DC 20550.

Purpose of Committee: To evaluate merit review as practiced by NSF and other agencies and provide its advice and recommendations concerning alternative systems of merit review and selection of projects.

Summarized Agenda: Committee will hear testimony from Federal research supporting agencies about their project review and selection systems currently in operation.

M. Rebecca Winkler,

Committee Management Officer.

November 19, 1985.

[FR Doc. 85-27915 Filed 11-21-85; 8:45am]

BILLING CODE 7555-01-M

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 24, 1985. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627,

Division of Polar Programs, National Science Foundation, Washington DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the Federal Register on July 15, 1985.

The application received is as follows:

Applicant

David F. Parmelee, 349 Bell Museum, University of Minnesota, Minneapolis, Minnesota 55455.

Activity for Which Permit Requested

Taking; Import into U.S.A.; Enter Specially Protected Area.

The applicant is conducting a population study of Antarctic birds. The applicant proposes to capture, band, measure and weigh birds of the following species. Some specimens will be bled for blood samples and released unharmed.

Species	Number
Giant Petrel	6
Wilson's Storm Petrel	6
Blue-eyed Shag	6
American Sheathbill	5
South Polar Skua	12
Brown Skua	12
Kelp Gull	5
Antarctic Tern	6
Penguin (sp.)	6
Duck (sp.)	6

Locations

Antarctic Peninsula area; Litchfield Island—Specially Protected Area

Dates

December 1985–December 1986.

Authority to published this notice has been delegated by the Director of the National Science Foundation.

A. N. Fowler,

Acting Director, Division of Polar Programs.

[FR Doc. 85–27909 Filed 11–21–85; 8:45 am]

BILLING CODE 7555-21-M

Advisory Committee for International Programs; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for International Programs.

Dates: December 9, 1985, 9:00 a.m. to 5:00 p.m.; December 10, 1985, 9:00 a.m. to 3:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC; Room 1142.

Type of Meeting: Open.

Contact Person: Dr. Bodo Bartocha, Director, Division of International Programs, National Science Foundation, Washington, D.C. 20550, Telephone (202) 357–9552.

Summary of Minutes: May be obtained from Contact Person.

Purpose of Meeting: To provide advice, recommendations, and oversight related to support for international cooperation in science and engineering.

Agenda: December 9: Welcome. Summary of past discussions on scientific and technical interactions among counties, and additional presentations and discussions on this subject with science counselors, industrial representatives, and government officials.

December 10: Update and briefing on recent NSF international activities and discussion of report and future agendas.

M. Rebecca Winkler,

Committee Management Officer.

November 19, 1985.

[FR Doc. 85–27914 Filed 11–21–85; 8:45 am]

BILLING CODE 7555-01-M

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, washington, DC 20550. Telephone (202) 357–7934.

SUPPLEMENTARY INFORMATION: On October 8, 1985, the National Science Foundation published a notice in the Federal Register of permit applications received. On November 15, 1985 permits were issued to:

Donald B. Siniff
George L. Hunt
Jennifer Dewey

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 85–24573 Filed 11–21–85; 8:45 am]

BILLING CODE 7555-21-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed before December 23, 1985. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 18th day of November 1985, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Acting Assistant Director, Export/Import and International Safeguards, Office of International Programs.

NRC EXPORT APPLICATIONS

Name of applicant, date of application, date received, application number	Material type (percent)	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., 10-22-85, 10-22-85, XSNM02243.	93.3	6.000	5.598	Working stock for material test and research reactors.	West Germany.
Westinghouse Electric Corp., 10-29-85, 11-12-85, XR-148.				Five (5) primary coolant pumps for Sizewill "B" reactor.	United Kingdom.

[FR Doc. 85-27929 Filed 11-21-85; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Quality and Quality Assurance in Design and Construction; Meeting

The ACRS Subcommittee on Quality and Quality Assurance in Design and Construction will hold a meeting on December 13, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, December 13, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will discuss with the NRC Staff such programs as CAT, IDVP, IDI, and readiness review to ensure quality in nuclear plant design and construction. Further, a discussion will be held with the Staff on their program to deal with allegations concerning quality at the OL stage (e.g., Comanche Peak). Emphasis should be on comparing the resources required by the various programs and the effectiveness of the programs in assuring quality of plant design, construction and readiness for operation.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this subject.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 18, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-27928 Filed 11-21-85; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirement of 10 CFR 50.71(e)(3)(ii) to the Northeast Nuclear Energy Company (NNECo) (the licensee) for the Millstone Nuclear Power Station, Unit No. 1, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 50.71(e)(3)(ii) to submit an updated Final Safety Analysis Report (FSAR) for the Millstone Unit 1 within 24 months of receipt of a letter notifying the licensee that the systematic evaluation program has been completed. By letter dated March 16, 1983, the staff informed NNECo that the systematic evaluation program had been completed for Millstone Unit 1 and that, pursuant to 10 CFR 50.71(e)(3), the licensee was required to file an updated FSAR. By letter dated February 4, 1985, the licensee requested an exemption to defer submittal of the updated FSAR for Millstone Unit 1. By letter dated April 11, 1985, the staff issued an exemption to 10 CFR 50.71(e)(3) for Millstone Unit 1 permitting a 6 month extension from the date of issuance of the exemption for submittal of the updated FSAR. Any additional exemptions to 10 CFR 50.71 would be granted by the Director of Licensing, ONRR, only upon review and approval of a program plan for the submittal of an updated FSAR. By letter dated September 13, 1985, the licensee requested an additional exemption to defer submittal of the updated FSAR for Millstone Unit 1. However, by letter dated October 2, 1985 the staff notified NNECo that its request for an additional exemption was being denied because the licensee's request was not responsive to the terms identified in the exemption issued on April 11, 1985. By letter dated October 11, 1985, NNECo resubmitted a request for an exemption from the schedular requirements of 10 CFR 50.71(e)(3)(ii) that contained the schedular information required. The deferral of the submittal of the updated FSAR is the proposed action being considered by the staff.

The Need for the Proposed Action

For most plants covered by 10 CFR 50.71(e)(3)(ii), ample time was available for updating the FSAR within the 24-month interval allowed in the regulations. However, Millstone Unit 1 requested participation in an expanded assessment of outstanding regulatory requirements with the idea of establishing an integrated schedule for the completion of these issues in a resource efficient manner.

The licensee has other ongoing activities which would directly affect the quality and substance of an updated FSAR. For example, the staff is now implementing a limited Integrated Safety Assessment Program (ISAP) for Milstone Unit 1. The purpose of ISAP is to prioritize outstanding NRC requirements and licensee initiatives resulting in an integrated living schedule and will serve as a basis upon which future regulatory requirements can be judged. The licensee believes that these additional efforts will facilitate a better understanding of the plant design bases when the updated FSAR is submitted.

The licensee in its October 11, 1985, exemption request identified the milestones for the completion of the FSAR update as required in the April 11, 1985 exemption. In this exemption request the licensee requested relief from the required completion date until March 31, 1987.

Environmental Impacts of the Proposed Action

The proposed exemption affects only the required date for updating the FSAR and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require an earlier date for submittal of the updated FSAR. Such an action would not enhance the protection of the environment and would result in unnecessary diversion of utility engineering resources from other work of higher safety significance.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Millstone Unit 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated October 11, 1985., This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland, this 12th day of November 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Sofety Assessment, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-27930 Filed 11-21-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-528]

Arizona Public Service Co., et al; Palo Verde Nuclear Generating Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commisison (the Commission) is considering issuance of an Exemption from a portion of the requirements of General Design Criterion (GDC) 4 (10 CFR Part 50, Appendix A) to the Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power [1], and Southern California Public Power Autority (the licensees) for the Palo Verde Nuclear Generating Station, Unit 1, located at the lisensees' site in Maricopa County, Arizona.

[1] The Los Angeles Department of Water and Power will not actually become a co-owner until after Palo Verde Unit 1 achieves commercial operation.

Environmental Assessment:

Identification of Proposed Action: The Exemption would permit the licensees not to consider the dynamic effects and, hence, not require pipe whip restraints and jet impingement shields associated with postulated pipe breaks in the Palo Verde Unit 1 primary coolant system, on the basis of advanced calculational methods for assuring that piping stresses would not result in rapid piping failure; i.e., pipe breaks.

Need for Proposed Action: The proposed Exemption is required because GDC 4 requires that structures, systems and components important to safety shall be appropriately protected against dynamic effects including the effects of discharging fluids that may result from equipment failures, up to and including a double-ended rupture of the largest pipe in the reactor coolant system (Definition of LOCA). In recent submittals, the licensees have provided information to show by advanced fracture mechanics techniques that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before flaws in the piping materials can grow to critical or unstable sizes which could lead to large break areas, such as the double-ended guillotine break or its equivalent. The NRC staff has reviewed and accepted the licensees' conclusion. Therefore, the NRC staff agrees that the double-ended guillotine break in the primary pressure coolant loop piping, and its associated dynamic effects, need not be required as a design basis accident for pipe whip restraints and jet impingement shields, i.e., the restraints and shields are not needed. Accordingly, the NRC staff agrees that an exemption form GDC 4 is appropriate.

Environmental Impact of the Proposed Action: The proposed Exemption would not affect the environmental impact of the facility. No credit is given for the barriers to be eliminated in calculating accident doses to the environment. While the jet impingement barriers would minimize the damage from jet forces from a broken pipe, the calculated limitation on stresses required to support this proposed Exemption assures that the probability of pipe breaks which could give rise to such forces are extremely small; thus, the pipe whip restraints and jet impingement shields would have no significant effect on the overall plant accident risk.

The proposed Exemption does not otherwise affect radiological plant effluents. Likewise, the relief requested does not affect non-radiological plant

effluents, and has no other environmental impact. The elimination of the pipe whip restraints and jet impingement shields would tend to lessen the ocupational doses to workers inside containment. Therefore, the Commisson concludes that there are no significant radiological or non-radiological impacts associated with this proposed Exemption.

The proposed Exemption involves design features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant non-radioactive effluents and has no other environmental impact. Therefore, the Commission concludes that there are no non-radiological impacts associated with this proposed Exemption.

Since we have concluded that there are no measurable negative environmental impacts associated with this porposed Exemption, any alternatives would not provide any significant additional protection of the environment. The alternative to granting the Exemption would be to require literal compliance with GDC 4.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement (Operating License Stage) for Palo Verde, Unit 1.

Agencies and Persons Contacted: The NRC staff reviewed the licensees' request and applicable documents referenced therein that support this proposed Exemption for Palo Verde, Unit 1. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the requests dated June 7, 1984, and November 13 and 15, 1985, and other information provided by Combustion Engineering, Inc., in letters dated June 14, 1983 and December 23, 1983, which are referenced by the licensees. These documents, utilized in the NRC staff's technical evaluation of the exemption request, are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004. The staff's technical evaluation of the exemption request will be published with the exemption (if the exemption is granted) and will also be available for inspection at both locations listed above.

Dated at Bethesda, Maryland, this 20th day of November, 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85-28022 Filed 11-21-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23909; 70-6667]

National Fuel Gas Co.; Proposed Extension of Period To Issue and Sell Common Stock Pursuant to a Dividend Reinvestment and Stock Purchase Plan

November 18, 1985.

National Fuel Gas Company ("NFG"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to sections 69(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

By order in this proceeding dated December 4, 1981 (HCAR No. 22297), NFG was authorized to issue and sell, from time to time through December 31, 1985, up to 500,000 shares of its authorized but unissued common stock, par value $10 per share ("Additional Common Stock"), pursuant to a Dividend Reinvestment and Stock Purchase Plan ("Plan"). Up to October 31, 1985, NFG issued and sold 343,017 shares pursuant to the Plan. It is stated that NFG's Board of Directors desires to avoid terminating the Plan at December 31, 1985, in case section 305(e) of the Internal Revenue Code (which provides certain tax advantages with respect to qualified reinvested public-utility dividends and which is currently scheduled to expire on December 31, 1985) is extended. Accordingly, NFG seeks an extension of its current authorization to issue and sell Additional Common Stock through December 31, 1986.

The Additional Common Stock will be offered to all holders of record of shares of common stock or preferred stock of NFG pursuant to the voluntary Plan whereby such shareholders may elect to invest their regular cash dividends and/or optional cash payments in the Additional Common Stock. The purchase price of the Additional Common Stock will be the average of the daily high and low sale prices of the common stock of NFG, as reflected in consolidated trading reports for New York Stock Exchange issues, for the period of the last 5 days on which the common stock of NFG was traded immediately preceding the dividend payment date, but not less than the par value of $10 per share. NFG will use the proceeds from the sale of the Additional Common Stock for the repayment of short-term debt, for the acquisition of additional securities of, or capital contributions to, subsidiaries, or for other proper corporate purposes.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 12, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-27888 Filed 11-21-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22620; File No. SR-Amex-85-36]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Relating to Short Sale Rule

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 October 8, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items

have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is proposing to amend Exchange Rule 7, the Exchange's short sale rule, to exclude listed bonds from the rule's coverage in conformity with SEC Rule 10a–1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* Exchange Rule 7 (the "Rule") generally prohibits any Exchange member or member organization from effecting a short sale of a security admitted to dealings on the Exchange, for any account, except on a "plus" or "zero-plus" tick in relation to the last sale price of the same security on the Exchange. The Rule is in most respects parallel to SEC Rule 10a–1. However, Rule 7 and SEC Rule 10a–1 are not identical, primarily as a result of amendments to the SEC rule over the years, and Rule 7 is today more restrictive than Rule 10a–1 with respect to its application to corporate bonds.

Rule 7 applies to any short sale of a "security", which, as defined in the Exchange Constitution, includes corporate bonds which are traded on the exchange. SEC Rule 10a–1, as amended in 1975, however, applies only to transactions in securities reportable to the Consolidated Tape. Transactions in corporate bonds are reported to the Tape but are not reported on a consolidated basis with other markets. Moreover, the bulk of transactions in Amex-listed corporate bonds are done over-the-counter. Since consolidated reporting is generally regarded as a predicate for the types of manipulation short selling regulation was meant to prevent, the extension of Rule 7 to corporate bonds appears to be more of an historical anomaly than a regulatory necessity.

The Exchange believes that the discrepancy between Rule 7 and Rule 10a–1 has placed the Exchange at a competitive disadvantage in relation to the over-the-counter market. Because of the restrictions of Rule 7, the Exchange's bond specialist is often prohibited from selling to the public at a price at which the same transaction could be effected in the over-the-counter market where short selling restrictions do not apply. Furthermore, execution of a public sell order may be prohibited on the Exchange at a price which would be permissible for a sale over-the-counter.

The Exchange is therefore proposing to amend Rule 7 to exclude listed bonds from its coverage by conforming the Rule to SEC Rule 10a–1. Such a change would remove unnecessary regulation and eliminate a competitive inequity between the over-the-counter market and the Exchange market in bonds.

(2) *Basis.* The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that by removing unnecessary regulation and eliminating a competitive inequity between the exchange and the over-the-counter markets, it will remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, in furtherance of the objectives of section 11A(a)(1)(C)(ii), the proposed rule change is designed to assure fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will create no burden on competition, and in fact by eliminating a competitive inequity between the exchange market and the over-the-counter market in bonds, it will enhance competition between these markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has requested accelerated approval of the proposed rule change because it believes that its current extension of short selling restrictions to corporate bonds, which is not required under Rule 10a–1 under the Act, has competitively disadvantaged Amex bond specialists relative to over-the-counter traders with respect to Amex-listed bonds. The Amex believes that, under its rule proposal, competition between the markets will be enhanced.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed rule change is consistent with Rule 10a–1 under the Act and may encourage greater competition between Amex specialists and over-the-counter market makers in the same bonds.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foreging. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the Amex.

All submissions should refer to the file number in the caption above and should be submitted by December 13, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 13, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-27889 Filed 11-21-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22621; File No. SR-NASD-85-30]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on September 30, 1985, copies of a proposed rule change and an amendment thereto on November 8, 1985 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder, to amend its Rules of Fair Practice and Code of Procedure. The new section of the Rules of Fair Practice, section 39 of Article III, will require a broker-dealer firm that wishes to change its exempt status under the Commission's customer protection rule (17 CFR 240.15c3-3) to request and receive approval from the NASD before making the change. The amendment to the Code of Procedure establishes the procedures a firm must follow to acquire NASD approval, as well as procedures to follow if the member's request is denied.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22501, October 3, 1985) and by publication in the **Federal Register** (50 FR 41273, October 9, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposal rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: November 13, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-27890 Filed 11-21-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23908; 70-7178]

NEES Energy, Inc.; Proposal To Enter Into Credit Agreement; Exception From Competitive Bidding

November 18, 1985.

NEES Energy, Inc. ("NEES Energy"), 25 Research Drive, Westborough, Massachusetts 01582, the energy management subsidiary for New England Electric System ("NEES"), a registered holding company, has filed a declaration subject to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) thereunder.

NEES Energy proposes to enter into a credit agreement ("Credit Agreement") with The Bank of Nova Scotia ("BNS") and The Bank of Nova Scotia International Limited ("BNS International") (collectively "the Banks") which will assist NEES Energy in meeting its capital requirements through December 31, 1992. Under the terms and conditions of the Credit Agreement, NEES Energy proposes to borrow amounts not exceeding an aggregate amount of $10 million outstanding at any one time prior to December 31, 1988. Borrowings outstanding under the Credit Agreement on December 31, 1988 will be repaid in eight equal semi-annual installments commencing on June 30, 1989 and ending December 31, 1992. The Credit Agreement provides NEES Energy with the flexibility to select, from time to time, one of the following three interest rate options: (1) An interest rate per annum that fluctuates with changes in Base Rate of the Boston branch of BNS. (The Base Rate is the lending rate generally charged by the Boston branch of BNS for loans to its most creditworthy, commercial customers for short-term borrowings.) Prior to December 31, 1988, interest will be at the Base Rate of the Boston branch of BNS. Between January 1, 1989 and December 31, 1992, interest will be at ⅜ of 1% per annum above the Base Rate of the Boston branch of BNS, from time to time in effect. (2) An interest rate per annum that is fixed for a period of time ranging from 7 to 180 days, as selected by NEES Energy, and based upon the London Interbank Offered Rate ("LIBOR Rate"). Prior to December 31, 1988, interest will be ½ of 1% per annum above the LIBOR Rate, as determined by BNS International, for Eurodollar deposits of like amount and maturity. Between January 1, 1989 and December 31, 1992, interest will be ⅞ of 1% per annum above the LIBOR Rate, as determined by BNS International for Eurodollar deposits of like amount and maturity. (3) An interest rate per annum that is fixed for a period of time ranging from 7 to 180 days, as selected by NEES Energy, and based upon the BNS Certificates of Deposit Rate ("CD Rate"). Prior to December 31, 1988, interest will be at ⅝ of 1% per annum above the CD Rate for deposits of like maturity adjusted for reserve requirements imposed by the Federal Reserve Bank and charges by the Federal Deposit Insurance Corporation. Between January 1, 1989 and December 31, 1992, interest will be 1% per annum above the CD Rate for deposits of like maturity. Through 1992, the interest rate for borrowings based on the CD Rate will be adjusted for reserve requirements imposed by the Federal Reserve Bank and charges by the Federal Deposit Insurance Corporation.

NEES Energy may voluntarily repay borrowings based on the Base Rate in whole or in part, at any time without premium or penalty. NEES Energy may voluntarily repay borrowings based on the LIBOR Rate or the CD Rate without premium or penalty on the last day of the interest period selected by NEES Energy provided two business days prior notice is given.

On June 30, 1989, and on the last day of each successive semi-annual period thereafter through December 31, 1992, NEES Energy will make mandatory repayments to the Banks so that the aggregate amount of borrowings outstanding under the Credit Agreement will be reduced on each such date by 12.5% of the aggregate amount of such borrowings outstanding as of January 1, 1989.

Through December 31, 1988, NEES Energy will pay on the last day of each calendar quarter, a standby fee equal to ¼ of 1% per annum on the unused portion of the first $5 million of credit and ⅛ of 1% per annum on the unused portion of the second $5 million of credit. Between January 1, 1987 and December 31, 1988, NEES Energy will pay, on the last day of each calendar quarter, a standby fee equal to ¼ of 1% per annum on the unused portion of the $10 million of credit. Should any portion of the second $5 million of credit be used prior to January 1, 1987, an additional standby fee of ⅛ of 1% per annum will be payable, retroactive for a period of 90 days, on the portion used.

The Credit Agreement requires NEES Energy to agree that it will (i) not encumber its assets, (ii) maintain a debt to equity ratio not in excess of 1 to 1 in its capital structure, and (iii) not declare dividends in excess of 30% of the previous year's earnings without prior approvals of the Banks. In addition, the

Credit Agreement calls for a letter from NEES acknowledging that (i) its equity contributions to NEES Energy will equal, at all times, outstanding borrowings under the Credit Agreement and (ii) NEES Energy will remain a wholly owned subsidiary of NEES.

Funds borrowed under the Credit Agreement will be used by NEES Energy for general corporate requirements including the repayment of any borrowings from NEES.

The current Base Rate of the Boston branch of BNS is 9.5% per annum; the current 90 day LIBOR Rate is 8.25% per annum; and the current 90 day CD Rate is 8.1% per annum. Assuming $5 million of borrowing under the Credit Agreement, based on current market rates, and taking the standby fee into account, the effective cost of money to NEES Energy for borrowing under the Base Rate, the LIBOR Rate, and the CD Rate options specified in the Credit Agreement would be 9.625% per annum, 8.875% per annum, and 8.85% per annum, respectively.

By order dated March 22, 1985 (HCAR No. 23639), NEES was authorized to make loans and/or additional capital contributions to NEES Energy. The aggregate amount of additional capital contributions and outstanding loans from NEES are not to exceed $23 million under this authorization. Through September 30, 1985, NEES has made capital contributions to NEES Energy in amounts aggregating $3,375,000. As of that date, NEES has not loaned any funds to NEES Energy. The requested authorization to borrow up to $10 million from BNS and BNS International would not be in addition to the authorization to borrow funds from NEES previously auhtorized by the Commission. Therefore, any borrowings from BNS and BNS International under the Credit Agreement would reduce, by a corresponding amount, the authority previously granted to NEES to make loans and/or capital contributions to NEES Energy.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 12, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit, or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-27887 Filed 11-21-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for 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 requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments must be received within 15 days of this publication in the Federal Register. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer promptly.

Copies: Copies of forms, request for clearance [S.F. 83s], 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: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: [202] 395-3785

Title: SBA Form 1088, "Disclosure and assignment form

Form No.: SBA 1088

Frequency: On occassion

Description of Respondents: Participating lenders used this form to accomplish the transfer of ownership of an SBA Guaranteed Interest Certificate

Annual Responses: 3000

Annual Burden Hours: 6000

Type of Request: Extension

Title: SBA Forms 1454 and 1455, Application for Loan Pool or to become a Loan Pool Assembler

Form Nos.: SBA 1454, 1455

Frequency: On occasion

Description of Respondents: Pool Assemblers used these form to apply for status as a pool assembler for SBA guaranteed loans, and to supply the information necessary to create loan pools.

Annual Responses: 500

Annual Burden Hours: 1600

Type of Request: Extension

Title: Disaster Business Loan Application

Form Nos.: SBA 5, 739A, 1368 A, B, C

Frequency: On occasion

Description of Respondents: The information gathered from these forms provides SBA with facts necessary to determine eligibility and credit worthiness of business applicants for disaster assistance.

Annual Responses: 12050

Annual Burden Hours: 50250

Type of Request: Extension

Dated: November 14, 1985.

Richard Vizachero,

Chief, Administrative Procedures and Documentation Section, Small Business Administration.

[FR Doc. 85-27853 Filed 11-21-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 06/06-0291]

Hinsley Venture Capital, 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 (1985)] 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: Hinsley Venture Capital, Inc.

Address: 9494 Southwest Freeway, Suite 100 Houston, Texas 77074.

The proposed officers, directors and shareholder of the Applicant are as follows:

Name	Position	Percent of ownership
George R. Hinsley, Jr., 2208 South Belmont, Richmond, TX 77469.	Chairman of the Board.	100
Gene E. Russel, 2214 Par Lane, Richmond, TX 77469.	President, Treasurer.	None.
Robert Venditelli, 6535 Vanlynn, Houston, TX 77084.	Vice President, Secretary.	Do.
Patricia J. Hinsley, 2208 Belmont, Richmond, TX 77469.	Vice President Assistant Secretary.	Do.
George R. Hinsley III, 2208 South Belmont, Richmond, TX 77469.	Assistant Secretary.	Do.
Lone Star Capital, Ltd. 2401 Fountainview, Suite 950, Houston, TX 77057.	Investment Advisor.	Do.

The Applicant, a Texas corporation, will begin operations with $1,040,000 in private capital and conduct its activity principally in the State of Texas, but will consider investments in other areas of the United States.

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 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 Houston, Texas area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 14, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-27852 Filed 11-21-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Revocation of the Certificates of Public Convenience and Necessity or Domestic All-Cargo Air Service Certificates of Various Air Carriers

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85-11-46), Docket 43600.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the certificates of Air Polynesia, Inc. T/A DHL Cargo; Air Washington, Inc.; Altair Airlines, Inc.; Atlantic International Airlines, Inc.; Caribbean Air Services, Inc.; Classic Air, Inc.; Constitution Airlines, Inc.; Eagle Aviation, Inc.; Falwell Aviation, Inc.; Freedom Airlines, Inc.; Genair International, Inc.; National Express, Inc.; New York Airways, Inc.; Pacific American Air Lines, Inc.; Pacific East Air Lines, Inc.; Rainbow Air, Inc.; Southeast Air Cargo, Inc.; Southeast Airlines, Inc.; Taino International Airways, Inc.; and Yukon Air Service, Inc. d/b/a Air North.

DATES: Persons wishing to file objections should do so no later than December 10, 1985.

ADDRESSES: Responses should be filed in Docket 43600 and addressed to the Office of Documentary Services, Department of Transportation, 400 7th Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Major S. Galloway, Special Authorities Division, Department of Transportation, 400 7th Street, S.W., Washington, DC 20590, (202) 755-3814.

Dated: November 19, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-27953 Filed 11-21-85; 8:45 am]

BILLING CODE 4910-62-M

Agreements Filed Under Sections 408, 409, 412 and 414 During the Week Ending November 15, 1985

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
Nov. 12, 1985	43576	Members of International Air Transport Association.	Cargo Increase Ex-Greece-Currency	Dec. 1, 1985.
Nov. 12, 1985	43577; R-1—R-6	Members of International Air Transport Association.	Canada/Mexico Europe Adjustment Factors and Baggage Chgs.	Dec. 1, 1985.
Nov. 12, 1985	43578; R-1—R-16	Members of International Air Transport Association.	Fares within Middle East/Africa	Jan. 1, 1986.
Nov. 13, 1985	43584; R-1—R-14	Members of International Air Transport Association.	TCI Fares-Expedited	Dec. 1, 1985 thru Dec. 10, 1985.
Nov. 15, 1985	43592; R-1—R-94	Members of International Air Transport Association.	TCI Passenger Fares	Apr. 1, 1986.
Nov. 15, 1985	43593; R-1—R-2	Members of International Air Transport Association.	CO Rate Italy-NY	Nov. 1, 1985.
Nov. 15, 1985	43594; R-1—R-11	Members of International Air Transport Association.	Canada-US/Israel Fares	Apr. 1, 1986.
Nov. 15, 1985	43595	Members of International Air Transport Association.	GCR-TC2	Dec. 1, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-27952 Filed 11-21-85; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended November 15, 1985.

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expendited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Nov. 13, 1985	43582	Aaron International Airlines, Inc., c/o Benjamin R. Achenbach, Jr., Dunnington, Bartholow & Miller, 1700 K Street, NW., Suite 1100, Washington, D.C. 20006. Application of Aaron International Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests amendment of its certificate so as to confer upon applicant worldwide authority to engage in charter foreign air transportation of property and mail. Conforming Applications, Motions to Modify Scope and Answers may be filed by December 11, 1985.
Nov. 14, 1985	43587	Republic Airlines, Inc., c/o Raymond J. Rasenberger, Zuckert, Scoutt, Rasenberger & Johnson, 888 Seventeenth Street, NW., Washington, D.C. 20006. Application of Republic Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests renewal of its certificate of public convenience and necessity for Route 293 (Detroit-Montreal). Conforming Applications, Motions to Modify Scope and Answers may be filed by December 12, 1985.
Nov. 15, 1985	43591	USAIR, Inc., c/o Frank J. Cotter, Washington National Airport, Washington, DC 20001. Application of USAir, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for renewal of its certificate of public convenience and necessity for Route 291 to permit USAir to continue providing air transportation services between Cleveland, on the one hand, and Toronto and Montreal, on the other hand. Conforming Applications, Motions to Modify Scope and Answers may be filed by December 13, 1985.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 85-27954 Filed 11-21-85; 8:45 am]
BILLING CODE 4910-62-M

[Docket 43575]

United States-Japan Gateways Case; Postponement of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled matter scheduled to be held on December 3, 1985, has been postponed until December 11, 1985, at 10:00 a.m. (local time) in Room 5332, 400 7th Street, SW., Washinton, DC, before the undersigned administrative law judge.

Order 85-11-29 defines the issues to be considered. In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and two copies to the judge of (1) proposed stipulations; (2) requests for information and evidence in addition to the proposed evidence request attached to Order 85-11-29; (3) statements of position; and (4) proposed procedural dates. The Office of Aviation Enforcement and Proceedings (AEP) will circulate its material on November 27, 1985, and the other parties on or before December 6, 1985. The submissions of the other parties shall be limited to points on which they differ with AEP and shall use the marking and lettering system used by AEP.

Order 85-11-29 states that the judge may entertain motions to alter the proposed request for information and evidence. Such motions shall be filed by all parties on their respective days for filing the above information.

The November 27 and December 6 dates are for actual delivery of materials rather than mailing dates.

Dated at Washington, DC, November 18, 1985.

John M. Vittone,
Administrative Law Judge.
[FR Doc. 85-27892 Filed 11-21-85; 8:45 am]
BILLING CODE 4910-62-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review

AGENCY: United States Information Agency.

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 renewal of OMB approval 3116-0159, an information collection which requires prospective grantees to submit proposals to the U.S. Information Agency for the exchange of young people with foreign countries.

DATE: Comments must be received by December 23, 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) 485-8676. And OMB review: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-3785.

SUPPLEMENTARY INFORMATION: Title: "Guidelines for the President's International Youth Exchange Initiative Project Grants." Applicants must complete forms proposing to conduct youth exchange programs with foreign countries. Grants of funds are provided to those who submit the proposals which meet the needs of the U.S. Information Agency and which offer the most likely prospect of improving cross-cultural understanding and language skills of exchange students and to strengthen a shared understanding of, and commitment to, democratic values.

Date: November 18, 1985.

Charles N. Canestro,
Federal Register Liaison.
[FR Doc. 85-27858 Filed 11-21-85; 8:45 am]
BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "The New Painting: IMPRESSIONISM 1874–1886" (included in the list [1] filed as a part of this determination), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements between the Fine Arts Museums of San Francisco and foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about January 16, 1986, to on or about April 6, 1986, and at the de Young Memorial Museum of the Fine Arts Museums of San Francisco, San Francisco, California, beginning on or about April 19, 1986, to on or about July 6, 1986, is in the national interest.

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: November 20, 1985.

Joseph A. Blundon,

Acting General Counsel and Congressional Liaison.

[FR Doc. 85-28099 Filed 11-21-85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a revision and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: November 19, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Revision

1. Department of Veterans Benefits.
2. Claim for Repurchase of Loan.
3. VA Form 26-8084.
4. On occasion.
5. Businesses or other for-profit.
6. 2,770 responses.
7. 1,385 hours.
8. Not applicable.

[FR Doc. 85-27916 Filed 11-21-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 226
Friday, November 22, 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 RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 27, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-27971 Filed 11-20-85; 9:59 am]

BILLING CODE 6210-01-M

2

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1360)

TIME AND DATE: 10:30 a.m. (EST), Tuesday, November 26, 185.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on November 6, 1985.

Discussion Item

1. Findings of a series of public workshops on hazardous wastes conducted across the Tennessee Valley and recommendations on TVA's future role in hazardous waste management activities.

Action Items

C—Power Items

C1. Supplement to Contract No. TV-61135A with Gas-Cooled Reactor Associates for development of the High Temperature Gas-Cooled Reactor.

D—Personnel Items

*D1. Supplement to consulting Contract No. TV-55304A with Robert B. Jansen, Spokane, Washington, for consultation on the design and construction on major hydro projects, requested by the Office of Engineering.

*D2. Supplement to consulting Contract TV-44938A with John M. Kellberg, Knoxville, Tennessee, for consultation on major hydro projects and engineering problems associated with thermal power plants, requested by the Office of Engineering.

D—Personnel Items

D3. Personal services contract with American Technical Associates, Inc., Knoxville, Tennessee, to provide engineering and technical support services as needed to satisfy critical needs for construction and operating programs, requested by the Office of Engineering.

E—Real Property Transactions

E1. Grant of permanent easement to the Nickajack Port Authority for the construction, operation, and maintenance of a rail spur, affecting 1.94 acres of Nickajack Reservoir land located in Marion County, Tennessee—Tract No. XTNJR-19E.

E2. Grant of permanent easement to the State of Tennessee for public recreational development affecting 94 acres of Norris Reservoir land located in Anderson and Campbell counties, Tennessee—Tract No. XTNR-105RE; and grant of a second permanent easement for a waterline affecting 0.2 acre of Norris Reservoir land located in Anderson County, Tennessee—Tract No. XTNR-107P.

F—Unclassified

F1. Contract No. TV-68189A between Alabama Department of Economic and Community Affairs, Office of Employment and Training and TVA to continue a training program for unemployed craftspersons.

*Items approved by individual Board Members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennesee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: November 19, 1985.

W.F. Willis;

General Manager.

[FR Doc. 85-27985 Filed 11-20-85; 10:56 am]

BILLING CODE 8120-01-M

3

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-50A]

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Tuesday, November 26, 1985.

CHANGES IN THE MEETING: Addition of agenda item:

4. Petitions and Complaints:

(a) Certain upper body protector apparatus for use in motosports (Docket Number 1253).

In conformity with 19 CFR 201.37(b), Commissioners Stern, Liebeler, Eckes, Lodwick, and Rohr determined by unanimous vote that Commission business requires the change in subject matter by addition of the agenda item, affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-28128 Filed 11-21-85; 10:50 am]

BILLING CODE 7020-02-M

Federal Register

Friday
November 22, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum 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 Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Arizona: AZ83–5105	Mar. 4, 1983.
Arkansas:	
AR85–4044	Oct. 18, 1985.
AR85–4045	Do.
California: CA85–5035	Sept. 6, 1985.
District of Columbia: DC84–3009	Apr. 6, 1984.
Illinois: IL85–5011	Feb. 22, 1985.
Iowa:	
IA85–4017	June 14, 1985.
IA85–4018	Do.
Louisiana: LA85–4020	Aug. 9, 1985.
Michigan: MI85–5024	June 28, 1985.
New Mexico: NM85–4014	June 14, 1985.
Oregon: OR85–5030	June 28, 1985.
Pennsylvania:	
PA84–3002	Feb. 10, 1984.
PA85–3030	June 21, 1985.
PA85–3034	Aug. 23, 1985.
Texas:	
TX85–4018	June 14, 1985.
TX84–4028	May 4, 1984.
TX85–4001	Jan. 1, 1985.
TX85–4013	May 10, 1985.
TX84–4045	Aug. 10, 1984.
TX84–4047	Do.
TX84–4015	Mar. 16, 1984.

Supersedeas Decision to General Wage Determination Decisions

The numbers of the decision being modified 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.

Missouri: MO85–4006(MO85–4049)	Sept. 6, 1985.

Signed at Washington, D.C., this 15th day of November 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. AZ 83-5105

MOD NO. 8

(49 FR 9426-March 4, 1983)

Pima County, Arizona

CHANGE:

	Basic Hourly Rates	Fringe Benefits
CARPENTERS:		
Carpenters: Saw Filer: and Shingler	$15.415	$2.80
Floor Layer and Piledriver	15.76	2.80

DECISION NO. AR85-4044 - MOD. # 1 (50FR42335 - October 18, 1985)

Union & Ouachita Cos., Arkansas

CHANGE:

	Basic Hourly Rates	Fringe Benefits
BOILERMAKERS	$15.875	$3.20
CARPENTERS	12.50	1.49
Millwrights & Piledrivermen	13.00	1.49

DECISION NO. AR85-4045 - MOD # 1 (50FR42334 - October 18, 1985)

Clark, Garland & Hot Springs Cos. Arkansas

CHANGE:

	Basic Hourly Rates	Fringe Benefits
BOILERMAKERS	15.875	3.20
BRICKLAYERS-STONEMASONS Hot Springs County	12.85	.79
CARPENTERS	12.50	1.49
MILLWRIGHTS & PILEDRIVERMEN	13.00	1.49

DECISION NO. CA85-5035 - MOD #2

(50 FR 36519 - September 6, 1985)

Imperial, Inyo, Kern, etc., Counties, CA

Change:

Parking Lot Striping Work and/or Highway Markers as follows: This should not be listed under Area 4; it is a separate category which covers Areas 1, 2, 3 and 4.

	Basic Hourly Rates	Fringe Benefits

DECISION NO. DC84-3009 MOD. #23

(49 FR 13800-April 6, 1984)

DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES

DELETE:

	Basic Hourly Rates	Fringe Benefits
PLASTERERS	15.31	2.00

ADD:

PLASTERERS AND DRYWALL APPLICATORS (finishing of gypsum wallboard, including taping, pointing and spackling)

	Basic Hourly Rates	Fringe Benefits
	15.31	2.00

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS	16.25	3%+3.25
LINE CONSTRUCTION:		
All Other Work:		
Linemen, cable splicers, equipment operators	17.92	8%+1.00
Truck with winch, truck-pole or steel handling	9.35	8%+1.00
Groundmen	9.10	8%+1.00

DECISION #IA85-4013-MOD.#2 (50 FR 24969--6/14/85)

Statewide (except Black Hawk and Scott Counties, Iowa)

CHANGE:

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Zones 2 and 3:		
Group 1	$10.00	$1.30
Group 2	9.50	1.30
Group 3 (Flaggers)	7.00	1.30

DECISION #IA85-4016-MOD.#2 (50 FR 24987--6/14/85)

Statewide (except Black Hawk & Scott Counties, Iowa)

CHANGE:

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Zones 2 and 3:		
Group 1	$10.00	$1.30
Group 2	9.50	1.30
Group 3 (Flaggers)	7.00	1.30

DECISION NO IL85-5011-MOD#2

(50 FR 7540 - Feb. 22, 1985)

ADAMS, BROWN, CASS, CHAMPAIGN, CHRISTIAN, CLARK, COLES, CUMBERLAND, DEWITT, DOUGLAS, EDGAR, LOGAN, MACON MASON, MENARD, MORGAN, MOULTRIE, PIATT, PIKE, SANGAMON, SCHUYLER, SCOTT, SHELBY and VERMILION Counties, Illinois

ADD:

Add Mason County

	Basic Hourly Rates	Fringe Benefits

DECISION #LA85-4022-MOD.#4 (50 FR 32351 - 8/9/85)

STATEWIDE, LOUISIANA

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Boilermakers	$15.875	$3.20
Bricklayers & Stonemasons: Zone 9	13.40	
Cement Masons: Zone 6	11.00	
Marble, Tile & Terrazzo Workers & Finishers: Zone 3:		
Marble Setters	13.40	
Terrazzo Workers	13.40	

DECISION NO. M185-5024 - Mod. #2 (50 FR 26887 - June 28, 1985)

Bay, Genesee, etc., Counties, Michigan

Change:

	Basic Hourly Rates	Fringe Benefits
Electricians: Area 4	$16.55	$3.13 +5%

DECISION #NM85-4014-MOD.#3 (50 FR 24997 - 6/14/85)

STATEWIDE (EXCLUDING EDDY & LEA COUNTIES FOR BUILDING CONSTRUCTION IN NEW MEXICO)

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Asbestos Workers: Zone 2	$15.85	$2.57
Elevator Constructors:		
Area 1:		
Mechanics	12.52	3.29+a
Helpers	70%JR	3.29+a
Helpers (Prob.)	50%JR	

MODIFICATIONS P. 3

DECISION NO. PA84-3002
MOD. NO. 11
(49 FR 5295 - February 10, 1984)
Adams & York Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Roofers:		
Composition	$14.25	1.74
Slate	14.85	1.74

DECISION NO. PA85-3030
MOD. NO. 3
(50 FR 25852 - June 21, 1985)
Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania

CHANGE:		
Marble Setters	$16.27	2.15
OMIT:		
Roofers		
Composition	14.06	2.53
ADD:		
Roofers:		
New Cumberland Army Depot in York County:		
Composition	14.25	1.74
Slate	14.85	1.74
Remaining Counties	14.06	2.53

DECISION NO. OR85-5030 - Mod #4
(50 FR 28893 - June 28, 1985)
STATEWIDE OREGON

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CEMENT MASONS:		
(See Footnote "c")		
Cement Masons	$16.19	$4.72
Composition Workers, Power Machinery	102%	4.72

DECISION NO. PA85-3034
MOD. #1
(50 FR 34361 - August 23, 1985)
Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington, & Westmoreland Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
ADD:		
Laborers:		
Zone 1		
Class 5		
Flaggers	$9.00	24%
Zone 2		
Class 5		
Flaggers	9.00	24%

(5)

MODIFICATIONS P. 4

DECISION #TX85-4018-MOD.# 2
(50 FR 25004 - 6/14/85)
Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant, & Wise Counties, Texas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters:		
Zone 2:		
Carpenters & Piledrivermen	$14.50	$2.22
Acoustical, Drywall, Insulation & Metal Door Frames	12.28	2.22
Boilermakers	15.875	3.20

DECISION #TX84-4028-MOD.# 7
(49 FR 19207 - May 4, 1984)
BRAZOS COUNTY, TEXAS

CHANGE:		
Ironworkers	$13.14	$3.55
Boilermakers	15.875	3.20

DECISION #TX85-4001-MOD.#4
(50 FR 3623 - 1/25/85)
GALVESTON & HARRIS COUNTIES, TEXAS

CHANGE:		
Boilermakers	$15.875	$3.20
Ironworkers	13.14	3.55
Marble, Tile, & Terrazzo Workers:		
Galveston & Harris Cos.:	13.85	2.05

DECISION #TX85-4013-MOD#2
(50 FR 19868 - 5/10/85)
BEXAR COUNTY, TEXAS

CHANGE:		
Bricklayers & Stonemasons	$13.18	$2.32
Sprinkler Fitters	16.66	3.40

DECISION #TX84-4045-MOD#6
(49 FR 32168 - 8/10/84)
TRAVIS COUNTY, TEXAS

CHANGE:		
Boilermakers	$15.875	$3.20

DECISION #TX84-4047-MOD.#5
(49 FR 32167 - 8/10/84)
LUBBOCK COUNTY, TEXAS

CHANGE:		
Boilermakers	$15.875	$3.20

DECISION #TX84-4015-MOD.#7
(49 FR 10008 - 3/16/84)
WICHITA COUNTY, TEXAS

CHANGE:		
Boilermakers	$15.875	$3.20

(6)

SUPERSEDEAS DECISION

STATE: Missouri & Kansas

COUNTIES: Cass,Clay,Jackson, Platte & Ray Missouri;Johnson & Wyandotte, Kansas

DECISION NO.: MO85-4049

DATE: Date of Publication

Supersedes Decision No. MO85-4037 dated September 6, 1985 in 50 FR 36531.

DESCRIPTION OF WORK: Residential construction consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.29	4.85
BOILERMAKERS	17.345	3.50
BRICKLAYERS & STONEMASONS	15.04	4.50
CARPENTERS	11.00	1.05
CEMENT MASON:	15.895	2.38
ELECTRICIANS:		
Buildings of (3) stories or less:		
ZONE 1 - Johnson County, Kansas (that portion of Johnson County west of Aubry,Oxford & Shawnee Twps.)Cass, Clay,Jackson,Platte & Ray Counties, Missouri; & Wyandotte County,Kansas & remainder of Johnson County, Kansas	9.50	10%+ 2.26
Buildings of over (3) stories:		
ZONE 1 - Western half of Clay & Jackson Cos., Missouri not including Blue Springs;Northern half of Platte County; Northwestern portion of Cass County,Missouri; not including Pleasant Hill	16.74	10%+ 3.01
ZONE 2 - Remainder of Cass, Clay, Jackson & Platte Counties, Missouri:		
Electricians (Contracts exceeding 2000 man hours)	16.74	10%+ 3.01
Electricians (Contracts not exceeding 2000 man hours)	15.74	10%+ 3.01
ELECTRICIANS (CONT'D):		
ZONE 3 - Ray County, Missouri		
Electricians (contracts exceeding 2000 man hours	16.74	10%+ 3.01
Electricians (contracts not exceeding 2000 man hours	15.14	10%+ 3.01
ELEVATOR CONSTRUCTORS'	17.445	3.29+a
ELEVATOR CONSTRUCTORS' HELPERS		70%JR 3.29+a
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)		50%JR
GLAZIERS	14.665	3.56+ 17.14%
IRONWORKERS	17.51	3.37
LABORERS:		
Building Construction:		
ZONE I: Cass,Clay,Jackson & Platte Cos., Missouri;Johnson & Wyandotte Cos.,Kansas		
GROUP I	12.55	3.55
GROUP II	12.70	3.55
GROUP III	12.85	3.55
ZONE II (Ray Co., Missouri):		
GROUP I	11.55	3.55
GROUP II	11.70	3.55
GROUP III	11.85	3.55
LABORERS:		
Site Preparation & Grading:		
ZONE 1: Johnson & Wyandotte Counties, Kansas;Site Preparation, Incidental paving & utilities Clay,Jackson, Platte & Ray Counties, Missouri		
GROUP I	13.02	3.60
GROUP II	13.82	3.60

(7)

DECISION NO.: MO85-4049

Page 2

	Basic Hourly Rates	Fringe Benefits
TILE & MARBLE SETTERS	17.52	7%+1.23
TILE SETTERS & MARBLE FINISHERS	14.40	
PAINTERS:		
Brush,roller & tapers	15.54	2.00
Spray	16.54	2.00
PLASTERERS	16.05	
PIPEFITTERS	18.99	3.52
PLUMBERS	16.17	2.90
POWER EQUIPMENT OPERATORS:		
Building Construction (ZONE 1)		
GROUP I	16.36	4.05
GROUP II	16.01	4.05
GROUP III:	10.95	4.05
(a)	10.95	4.05
(b)	14.11	4.05
(c)	11.75	4.05
(d)	14.36	4.05
GROUP IV	16.16	4.05
GROUP V	16.26	4.05
GROUP VI	16.86	4.05
GROUP VII:		
(a)	16.46	4.05
(b)	16.21	4.05
(c)	14.21	4.05
GROUP VIII	17.36	4.05
GROUP IX	16.86	4.05
POWER EQUIPMENT OPERATORS: Site preparation & grading, Johnson & Wyandotte Counties, Kansas;Site Preparation, incidental paving & utilities Clay, Jackson, Platte & Ray Cos., Missouri (ZONE 2)		
GROUP I	15.30	4.07
GROUP II	15.05	4.07
GROUP III	14.35	4.07
GROUP IV		
(a)	10.33	4.07
(b)	13.35	4.07
GROUP V	15.55	4.07
ROOFERS:		
Roofers	16.48	2.91
SHEET METAL WORKERS	16.75	2.78
SOFT FLOOR LAYERS	13.07	3.79
SPRINKLER FITTERS	19.28	3.21
TERRAZZO WORKERS:		
Terrazzo Workers	17.56	12%
Terrazzo Finishers	13.58	
Terrazzo Base Machine Operator	13.93	
TRUCK DRIVERS:		
Building Construction: (ZONE 1)		
GROUP I	14.435	3.25
GROUP II	14.435	3.25
GROUP III	14.685	3.25
GROUP IV	14.56	3.25
GROUP V	14.585	3.25
GROUP VI	14.785	3.25
GROUP VII	15.535	3.25
GROUP VIII	15.435	3.25
GROUP IX	15.685	3.25
TRUCK DRIVERS: Site preparation & grading, Johnson & Wyandotte Counties, Kansas; Site preparation, Incidental paving & utilities Clay,Jackson,Platte & Ray Cos., Missouri (ZONE 2)		
GROUP I	14.17	4.25
GROUP II	14.02	4.25
GROUP III	13.71	4.25
GROUP IV	13.51	4.25
GROUP V	13.29	4.25

FOOTNOTES:

a - Employer contributes 8% of basic hourly rate for over 5 years of service & 6% of basic hourly rate for 6 mos. to 5 years service as Vacation Pay Credit. Also 7 paid holidays A thru G.

PAID HOLIDAYS:

A-Christmas Day, B-New Year's Day, C-Labor Day, D-Memorial Day, E-Independence Day, F-Thanksgiving Day,G- Day after Thanksgiving Day

(8)

CLASSIFICATION DEFINITIONS

LABORERS: Building Construction (Zones 1 and 2)
GROUP I - General laborer;wiremesh handlers or setters; carpenter tender; track men; salamander tenders; landscape man; sod layers; wrecker (for alterations or entire projects); plumber labors (conduit pipe, sewer work, drain tile and duck lines, digging and backfilling), power tool operators; pier hole diggers (over 10 ft.); jackhammer, and chipping hammer operators; chain saw operators; concrete saw operators; brush feeders on pulverizers; reinforcing steel handlers; air tamp operators; ditch winch operators; swinging scaffolds; georgie buggies (self-propelled); fork lift; hosemen; insulation man
GROUP II - Vibrator operator; fork lift (masonry), brick tender, plaster tender stonemasons tender (includes all hod carriers classifications previously shown as mortar men and scaffolding)
GROUP III - Barco, Jackson or similar tamp operators; asphalt rakers; power men; mastic hot kettle men; sandblasting and gunnite nozzlemen; wagon and churn drill operators; cutting torch or burner men

LABORERS: Site Preparation (Zone 3)
GROUP I - Carpenter tenders; salamander tenders; loading trucks under bins, hoppers and conveyors, track men and all other general laborers; air tool operators; cement handler (bulk or sack); chain or concrete saw; deck hands; dump man on earth fill; grade checkers on cuts and fills; georgie buggies man; material batch hopper man; scale man; material mixer man (except on manholes); coffer dams, abutments and pier hole men working below ground; riprap pavers rock, block or brick; scaffolds over 10 ft. not self-supported from ground up; skipman on concrete paving; vibrator man; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; puddlers (paving only), crusher feeder; man handling creosote ties on creosote materials; men working with and handling epoxy material or materials (where special protection is required); topper of standing trees; batter board man on pipe and ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; all laborers working on underground tunnels where compressed air is not used.
GROUP II - Spreader or screed man on asphalt machine; asphalt raker; laser beam man; barco tamper; jackson or any other similar tamp wagon driller; churn drills; air track drills and all other similar drills; form setters; cutting torch man; liners and stringline men on concrete paving, curbs, gutters and etc.; hot mastic kettleman; hot tar application; hand blade operators; manhole builders tenders and mortar men on brick or block manholes; sandblasting and gunnite nozzlemen; rubbing concrete; air tool operator in tunnels; manhole builder (brick or block); dynamite and powderman; welder; head pipe layer or sewer work

CLASSIFICATION DEFINITIONS - (Cont'd)

POWER EQUIPMENT OPERATORS - Building Construction (Zone 1)
Group I - Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; back fillers; backhoe; barber-greene loader; blade-power; boats-power; boilers (2); boring machines; cableways; cherry pickers; chip spreader; concrete ready-mixed plant, portable (job site); concrete mixer paver; crane-overhead; crusher, rock; derricks and derricks cars (power operated); ditching machines; dozers; dredges - any type power; grade-all - similar type; hoist, endless chain-power operator with power travel; loaders; mechanic and welder; mucking machine; orange peels; pumps - material; push cats; scoops; self-propelled rotary drill; shovel, power; side boom; skimmer scoop; testhole machine; throttle man; locomotives
GROUP II Boilers (1); Brooms - power operated; chip spreader (front man); clef plane operator; compressors (1) 125' or over; concrete saws, self-propelled; crab - power operated; curb finishing machine; firemen on rigs; flex plane; floating machine; form grader; greaser; hoist, endless chain - power operated; hopper - power operated; hydra hammer; lad-a-vator - similar type; rollers; siphons, jets, and jennies; sub-grader; tractors over 50 h.p.; compressors (2) 125' ft. or over not more than 20' apart; compressors-tandem; compressors single,truck mounted; elevator; finishing machine
Group III -
(a) Oilers
(b) Fork lift-masonry
(c) Oiler driver
(d) A-frame trucks; fork lift-all types (except masonry); mixers (w/side loaders); pumps (w/well points) dewatering systems, test or pressure pumps; tractors (except when hauling material)less than 50 h.p.
Group IV -
Clamshells, 100 ft. of boom or over (excl. jib); crane or rigs, 100 ft. of boom or over (excl. jib); draglines,100 ft. of boom or over (excl. jib); pile drivers,100 ft. of boom or over (excl. jib)
Group V
Hoists-each additional drum over 1 drum
Group VI
Crane or rigs, over 200 ft. of boom
Group VII
Ready Mixed Concrete Plants:
(a) Crane operator
(b) Loader operator & plant man
(c) Conveyor Operator
Group VIII
Master Mechanic
Group IX
Crane-tower or climbing

CLASSIFICATION DEFINITIONS - (Cont'd)

POWER EQUIPMENT OPERATORS: Site Preparation (Zone 2)
GROUP I - Asphalt paver and spreader; asphalt plant console operator; auto grader; backhoe; blade operator, all types; boilers-2; booster pump on dredge; boring machine (truck or crane mounted); bulldozer operator; clamshell operator; compressor maintenance operator-2; concrete plant operator, central mix; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dragline operator; dredge engineman; dredge operator; drill-cat with compressor mounted on cat; drilling or boring machine, rotary, self-propelled; high loader-fork lift; hoistline engine-2 active drums; locomotive operator, standard gauge; mechanics and welders; maintenance operator; mucking machine; pile driver operator; pitman crane operator; pump-2; push cat operator; quad-tracks; scoop operator-all types; scoops in tandem; self-propelled rotary drill (leroy or equal-not air trac); shovel operator; side discharge spreader; sidecoom cats; skimmer scoop operater; slip-form paver (CMI, REX, or equal); throttle man; truck crane; welding machine maintenance operator-2.
GROUP II - A-frame truck; asphalt hot mix silo; asphalt plant fireman, drum or toiler; asphalt plant mixer operator; asphalt plant man; aspoalt roller operator; back filler operator; chip spreader; concrete batch plant, dry-power operated; concrete mixer operator, skip loader; concrete pump operator; crusher operator elevating grader; greaser; hoisting engine-1 drum; letourneau rooter; multiple compactor; pavement breaker, self propelled, of the hydra-hammer or similar type; power shield; pug mill operator; stump cutting machine; towboat operator, tractor operator over 50 h.p.; cutting machine; towboat operator,tractor operator over 50 h.p..
GROUP III - Boilers-1; chip spreader (front man); churn drill operator; compressor maintenance operator-1; concrete saws, self-propelled; conveyor operator; distributor operator; finishing machine operator; fireman, rig; float operator; form grader operator; pump; pump maintenance operator, other than dredge; roller operator, other than high type asphalt; screening and washing plant operator; self-propelled street broom or sweeper; siphons and jets; sub-grading machine operator; tank car heater operator-combination boiler and booster; tractor, 50 h.p. or less, without attachments; vibrating machine operator, not hand; welding machine maintenance operator-1.
GROUP IV
(a) Oiler
(b) Oiler drivers, all types
GROUP V - Clamshells, 3 yds. capacity or over; crane or rigs, 80 ft. of boom or over (including jib); draglines, 3 yds. capacity or over; piledrivers, 80 ft. of boom or over (including jib); shovels & backhoes, 3 yds. capacity or over

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CLASSIFICATION DEFINITIONS (Cont'd)

TRUCK DRIVERS - Building Construction (Zone 1)
GROUP I - Warehousemen and stock man.
GROUP II - Flat beds; pick-ups; dump trucks, under 10 yds.
GROUP III - Straddle trucks, wheel tractors (when used for towing); hydro lift trucks, hydraulically operated serial lifts; heavy hauling, A-frame and winch fork trucks; heavy excavating (dumpster, euclid, etc.); double bottom units (20 tons capacity and over)
GROUP IV - Dump trucks, 10 yds. and over; steel drivers; semi truck drivers
GROUP V - Distributor truck drivers and operators; oilers, greasers and mechanics' tenders
GROUP VI - Mechanics; transitmix;tractor trailer
GROUP VII - Transit mix, 5 yds. and over
GROUP VIII - Transit mix, under 5 yds.
GROUP IX - Transit mix tractor trailer; machine (ready mix plants)
TRUCK DRIVERS - Site Preparation (Zone 2)
GROUP I - Mechanics and welders
GROUP II - A-frame, lowboy and boom truck driver
GROUP III - Material trucks, tandem; two teams; semi-trailers; winch trucks-fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers, single axle; tank wagon drivers tandem or semi-trailers; insley wagons; dump trucks, excavating, 5 cu. yds. and over; dumpsters; half-tracks; speedace; euclids and other similar excavating equipment.
GROUP IV - One team; station wagons; pickpu trucks; material trucks, single axle; tank wagon drivers, single axle
GROUP V - Mechanics tender, oilers and greasers, field

WELDERS: Receive rate prescribed for craft performing operation 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 clauses (29 CFR, 5.5(a)(1)(ii)).

(12)

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Federal Register

Friday
November 22, 1985

Part III

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs; Proposed Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-335-PN]

Medicare Program; Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed Notice.

SUMMARY: This proposed notice sets forth a revised schedule of limits on skilled nursing facility inpatient routine service costs that are reimbursed under Medicare. This schedule would apply to cost reporting periods beginning on or after January 1, 1986 and before January 1, 1987.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 P.M. on December 23, 1985.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: BERC-335-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C.; or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland

In commenting, please refer to file code BERC-335-PN.

Comments will be available for public inspection as they are received, beginning approximately three weeks after the date of publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Steve Kirsh, (301) 594-9465.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1861(v)(1) and 1888 of the Social Security Act (the Act) authorize the Secretary to set prospective limits on allowable costs incurred by a provider of services that will be reimbursed under Medicare. These limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Implementing regulations appear at 42 CFR 405.460. Section 1888 of the Act directs the Secretary to set limits on per diem inpatient routine service costs for hospital-based and freestanding skilled nursing facilities (SNFs) by urban or rural area location.

Under the authority of section 1861(v)(1) of the Act, we published limits on September 29, 1982 (47 FR 42894) that continue to apply to freestanding SNFs. Elsewhere in this issue of the **Federal Register**, under the authority of section 1888 of the Act, we are proposing limits to apply to hospital-based SNFs for cost reporting periods beginning on or after October 1, 1982 and including cost reporting periods beginning on or after July 1, 1984.

Those limits contain provisions relating to: (1) Limits on adjusted per diem inpatient routine service costs, (2) a "market basket" index developed to reflect changes in the price of goods and services purchased by SNFs, (3) adjustments to the cost limits by an area wage index developed from hospital industry wages, (4) a classification system based on whether the SNF is hospital-based or freestanding and whether it is located in an urban or rural area, (5) a cost-of-living adjustment for the nonlabor portion of the limits for SNFs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, (6) freestanding SNF cost limits set at 112 percent of the average per diem labor-related and nonlabor costs, (7) hospital-based SNF cost limits set at the limit for freestanding SNFs, plus 50 percent of the difference between the freestanding limit and 112 percent of the average per diem routine service costs of hospital based SNFs, and (8) an administrative and general (A&G) add-on for hospital-based SNFs.

II. Discussion of Proposed Revised Schedule of Limits

In developing the revised limits proposed in this notice, we have retained essentially the same provisions as in the current limits, and the same methodology. We have, however, used the most recent SNF cost data for calculating the limits, as well as the most recent hospital industry wage data and projections of the rates of increases in the costs included in the SNF market basket. We are in the process of finalizing even more current data. If available, we would use it when the proposed changes are published in final. Also, as previously mentioned, we are proposing limits elsewhere in this issue of the **Federal Register** to apply to hospital-based SNFs for cost reporting periods beginning on or after October 1, 1982 and those beginning on or after July 1, 1984. The methodology for hospital-based SNFs for cost reporting periods beginning on or after July 1, 1984 in that notice is contained in this proposal for cost reporting periods beginning on or after January 1, 1986 and before January 1, 1987. Accordingly, our final publication of the cost limits beginning on or after January 1, 1986 will necessarily reflect any changes resulting from the rulemaking process of our proposal for the hospital-based SNF limits beginning July 1, 1984.

This proposed schedule of limits on SNF inpatient routine service costs, which would apply to cost reporting periods beginning on or after January 1, 1986 and before January 1, 1987, provides for the following:

A. Separate Group Limits for Labor-Related and Nonlabor Components of Per Diem Routine Service Costs

We would retain separate group limits for the labor-related and nonlabor components of per diem routine service cost. We calcuate these separate limits as follows:

1. Actual SNF per diem inpatient routine service cost data are obtained for each SNF.

2. To make the data reflect current conditions more accurately, the data is adjusted from the midpoints of the cost reporting periods represented in the data collection to the midpoint of the initial cost reporting period to which the limits would apply.

3. Each SNF's per diem cost is separated into labor-related and nonlabor portions. The labor-related portion is divided by the wage index for the SNF's location (see Tables II and III).

4. Finally, separate group means are computed for the labor-related and nonlabor components. Each group mean is multiplied by 112 percent.

B. Adjustment of SNF Cost Data by Wage Index

We would continue use of a hospital industry wage index to account for area wage differences. This is necessary because industry-specific data are not available on SNF wages. Since hospitals and SNFs generally compete in essentially the same labor market for employees, we believe an index based on geographic variations in hospital wages provides an accurate measure of geographic variations in wages paid by SNFs. We developed the wage index from hospital wage data obtained from the Bureau of Labor Statistics (BLS). The data used are those for the "hospital industry", a standard BLS reporting category. The wage index we would use

for the limits in this notice is based on data for calendar year 1983.

We have been advised by the BLS that the wage index values for some areas are based on estimated 1983 data and may need to be revised based on actual data that were not available when we computed the wage index values shown in Tables II and III.

If we receive additional 1983 data that require further changes in any wage index, we would notify the Medicare intermediaries of the corrected index and would direct them to recalculate the limits for the affected SNFs.

We also want to note that we are using the HCFA survey-based hospital wage index in the hospital prospective payment system. In the June 10, 1985 proposed rule concerning changes to the prospective payment system for fiscal year 1986, we requested comments on the use of this index for hospitals (50 FR 24377). After considering the comments, we decided to adopt the index for hospitals and announced that decision in a final rule issued on September 3, 1985 (50 FR 35646). We may also use the index in developing the SNF cost limits to be issued in the final notice following consideration of comments that we receive on this proposed notice.

We are also exploring the feasibility and desirability of developing a SNF industry-specific wage index system from the employee wage and compensation analysis data taken from the Medicare cost reports. If this alternative proves to be feasible and would provide a more accurate measure of SNF wage variations, we may use this type of index in future cost limit schedules.

C. Use of SNF Market Basket

We would continue to base the cost limits on reported costs adjusted for actual and projected cost increases by applying the SNF market basket index. This market basket is used to adjust the SNF cost data to reflect cost increases occurring between the cost reporting periods represented in the data collection to the midpoints of the cost reporting periods to which the limits would apply.

The market basket comprises the most commonly used categories of SNF routine service expenses. The categories we are using are based primarily on those used by the National Center for Health Statistics in its National Nursing Home Surveys.

The categories of expenses are weighted according to the estimated proportion of SNF routine services costs attributable to each category (see Appendix). The weights for all major categories of SNF costs are based on the National Nursing Home Surveys of 1973/1974 and 1977. (As noted in footnote 1 at the end of the appendix, the 1973/1974 survey obtained 1972 cost data and the 1977 survey obtained 1976 cost data.) These are the most current and comprehensive sources of national data on the distribution of costs in SNFs. (The second column of the appendix specifies the weights used for each category.)

In developing the market basket index, we obtained historical and projected rates of increase in the price of goods and services in each category. The market basket index table, in the third and fourth columns, identifies the price variables used and the source of the forecast for calendar years 1981 through 1987 (Appendix).

The market basket index also provides for adjustments to be made in the limits if our forecasts of economic trends prove erroneous. For cost reporting periods beginning on or after January 1, 1986 and before January 1, 1987, if the final rate of change in the market basket index for a year differs from the estimated rate of change by at least .3 of one percentage point the limits would be adjusted. We would advise the Medicare intermediaries to use the actual rate to adjust each SNF's limit retroactively at final settlement of the SNF's cost report. (This approach is first proposed and explained elsewhere in this issue of the **Federal Register**, in our proposed notice dealing with hospital-based SNF cost limits for cost reporting periods beginning on or after October 1, 1982 and those beginning on or after July 1, 1984. See section V. SUMMARY OF CHANGES IN METHODOLOGY, paragraph B.2.b. of the proposal for a complete discussion.)

D. Application of the Hospital Wage Index to Employee Benefits, Health Service Costs, Costs of Business Services, and Other Miscellaneous Expenses

In developing the current schedule, we applied the wage index discussed above to five categories of labor-related costs: wages, employee benefits, health service costs, business service costs, and other miscellaneous costs.

We have retained this method in developing this revised schedule of limits. The proportion of adjusted routine service costs we adjusted by the wage index is 81.62 percent for cost reporting periods beginning on or after January 1, 1986 and before January 1, 1987.

For purposes of applying the wage index, employee benefits include such items as FICA tax, health insurance, life insurance, facility contributions to employee retirement funds, and all other compensation that the SNF records in the "employee health and welfare" cost center on its Medicare cost report.

Health service costs are a category used by the National Nursing Home Survey conducted in 1977 by the Office of Health Research, Statistics and Technology, National Center for Health Statistics of the Public Health Service. They include the costs of routine services that are purchased under arrangement from outside sources.

Business services costs include costs of banking, contract laundry, telephone, and other services SNFs purchase at retail from outside suppliers.

Other miscellaneous costs include various types of routine operating costs not allocated to any other category of the market basket.

Thus, we would apply the wage index to the total portion of cost (81.62 percent attributable to wages, fringe benefits, health service costs, business service costs, and other miscellaneous expenses rather than to the wage portion (61.25 percent for cost reporting periods beginning on or after January 1, 1986 and before January 1, 1987) only. We would continue this method because our analysis of the data shows that area variations in routine per diem costs in these additional categories are closely related to area variations in prevailing wage levels. We believe that applying the wage index to the other categories of labor-related costs specified above, rather than to wages only, results in individual limits that are more equitable and more appropriate to each SNF's actual market environment.

E. Freestanding Limits Set at 112 Percent of Mean

For cost reporting periods beginning on or after January 1, 1986 and before January 1, 1987, we would maintain the revised limits at 112 percent of the average labor-related and average nonlabor-related costs of each group. We would continue to use the same methodology for freestanding SNFs as described in the September 29, 1982 **Federal Register** notice (47 FR 42894).

F. Hospital Based Limits

For cost reporting periods beginning on or after January 1, 1986 and before January 1, 1987, the revised hospital-based limit would equal the revised freestanding limit plus 50 percent of the difference between the freestanding limit and 112 percent of the mean per diem routine service costs of hospital-based SNFs. The methodology for hospital-based SNFs is the same as the one that we are describing in the notice

applicable only to hospital-based SNFs, published elsewhere in this issue of the **Federal Register**. We would continue to provide an add-on adjustment for A & G costs. The purpose of this add-on is to make an adjustment for the allocation of costs in the A & G cost center.

G. Cost-of-Living Adjustment for Alaska, Hawaii, Puerto Rico, and the Virgin Islands

To avoid disadvantaged SNFs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, we would continue to provide a cost-of-living adjustment for these areas. This is an adjustment of the nonlabor component of the limit that applies to these areas based on the amount of the most recently determined cost-of-living differentials developed by the Office of Personnel Management. Since we adjust the labor-related component by the applicable wage index, this cost-of-living adjustment would apply only to the nonlabor component.

H. Exception to Cost Limits

A provider could request an exception to the proposed cost limits under the provisions of 42 CFR 405.460(f). The request would be made to HCFA central office through the Medicare fiscal intermediary.

I. Classification System

We are proposing to retain the classification system based on whether an SNF is located within a metropolitan statistical area (MSA), as defined by the Office of Management and Budget (OMB). A discussion of OMB's MSA designations appears elsewhere in this **Federal Register** publication, in our proposed notice regarding hospital-based SNF cost limits for cost reporting periods beginning on or after October 1, 1982 and those beginning on or after July 1, 1984 (section V. Summary of Changes in Methodology, paragraph B.2.a.).

The MSA and non-MSA designations in this proposed notice are the same as those proposed for hospital-based SNF cost limits for cost reporting periods beginning on or after July 1, 1984 except for the following:

- The Alton-Granite City, IL, the East St. Louis-Belleville, IL, and the St. Louis, MO-IL urban areas have been combined into one urban area, the St. Louis, MO-IL area.
- Cheyenne, Wyoming, Jackson, Tennessee, and Rapid City, South Dakota have been added as new MSAs.

III. Methodology for Determining Per Diem Routine Service Cost Limit

A. Development of Published Limits

1. Data

As previously mentioned, we are using actual freestanding and hospital-based SNF inpatient routine service cost data, less capital-related costs allocated to general inpatient routine services, obtained from Worksheet D–1 of the latest Medicare cost reports available as of November 1982. The data have been adjusted to exclude the inpatient routine nursing salary cost differential. If an updated data base becomes available, we will use those data to develop the limits published in final in the **Federal Register**.

We adjusted these data using the market basket index discussed above, to inflate costs from the cost reporting periods in the data base to the midpoint of the first cost reporting period to which the limits would apply. The annual percentage increases in the market basket over the previous year that we used for this projection are:

1981	9.8
1982	6.6
1983	4.8
1984	4.3
1985	[1] 3.4
1986	[1] 4.3
1987	[1] 5.0

[1] Forecasted increase.

An adjustment would be made to the limits if the forecasted market basket rate differs from the actual rate by at least .3 of one percentage point. Following the end of each year that the limits are in effect, we would determine the actual rate of increase or decrease in the market basket for that year. The data necessary to make this determination are usually available in the second quarter of the following year. This would allow us to make the determination of the actual rate by June 30 of each year.

If the forecasted market basket rate differs from the actual rate by at least .3 of one percentage point, we would notify the Medicare intermediaries of the actual rate of increase or decrease and advise them to adjust each SNF cost limit at the time of final settlement.

2. Use of Wage Index To Adjust Cost Data

We divided each SNF's adjusted per diem routine service costs into labor-related and nonlabor portions. We determined the labor-related portion by multiplying each SNF's adjusted per diem routine service cost by 81.62 percent, which is the labor-related portion of cost from the market basket. We then divided the labor-related portion of each SNF's per diem cost by the wage index applicable to the SNF's location (see Tables II and III) to arrive at an adjusted labor-related portion of routine cost.

3. Group Means

We calculated separate means of labor-related and nonlabor adjusted routine service costs for each SNF group established in accordance with the SNF's MSA or non-MSA location.

4. Components of Limit

For each freestanding group, we multiplied the mean labor-related and mean nonlabor costs by 112 percent to arrive at the freestanding limits (Table I).

We then subtracted the freestanding limit for each group from 112 percent of the hospital-based mean for each group and multiplied the result by 50 percent. To arrive at the hospital-based limit (Table I), the 50 percent described above is added to the appropriate freestanding limit.

COST LIMIT DATA—HOSPITAL-BASED SNFS

112% of Hospital-Based Mean Cost	Urban (MSA)	Rural (NonMSA)
81.62%—Labor	$92.84	$80.40
18.38%—Non-Labor	23.00	15.80
Total	115.84	96.20

CALCULATION OF 50% DIFFERENCE BETWEEN 112% OF HOSPITAL-BASED MEAN COST AND FREESTANDING LIMIT

	Labor	Non-labor
Urban (MSA)		
112% of Hospital-Based Mean Cost	$92.84	$23.00
Freestanding limit (Table I)	46.85	11.62
Difference	45.99	11.38
50% of Difference	23.00	5.69
Plus Freestanding Limit	46.85	11.62
Hospital-Based Limit (MSA)	69.85	17.31
Rural (NonMSA)		
112% of Hospital-Based Mean Cost	$80.40	$15.80
Freestanding limit (Table I)	48.95	9.79
Difference	31.45	6.01
50% of Difference	15.73	3.01
Plus Freestanding Limit	48.95	9.79
Hospital-Based Limit (Non MSA)	64.68	12.80

5. A & G Add-on

We then calculate the A & G add-on for the hospital-based limited (see Table I).

	Urban	Rural
A & G Difference		
1. Hospital-Based SNF A & G Mean [1]	$8.14	$6.78
2. Freestanding SNF A & G Mean [1]	−3.85	−3.85
3. Difference	4.29	2.93
Amount of A & G Included in the 50% Difference between 112% of the Hospital-Based Mean Costs and the Freestanding Limit		
4. A & G Difference (line 3)	$4.29	$2.93
5. Average Routine Cost (Average routine Hospital-Based SNF mean cost equals $114.63 and $95.19 divided by 112%)	100.43	85.89
6. Percent of A & G Difference to Average Routine Cost (line 4 divided by line 5)	4.15%	3.41%
7. 50% of Difference between 112% of Hospital-Based SNF mean cost and freestanding SNF Limit	28.69	18.73
8. Amount of A & G Difference included on line 7 (line 6 times line 7)	1.19	0.64
A & G Add—On		
9. A & G Difference from line 3	4.29	2.93
10. Less amount from line 8	1.19	0.64
11. A & G Add-on (line 9 less 10)	3.10	2.29
	(81.62%) Labor	(16.38%) Nonlabor
Urban A & G Add-on = $3.06	$2.53	$0.57
Rural A & G Add-on = $2.27	$1.67	0.42

[1] Wage Deflated Means.

B. Adjustment of Published Limits

1. Adjustment of Labor-Related Component by Wage Index

a. *Freestanding SNFs.* To arrive at a labor-adjusted limit for each SNF, we multiply the labor-related component of the limit for the SNF's group by the wage index developed from wage levels for hospital workers in the area in which the SNF is located (see Tables II and III). The adjusted limit that applies to an SNF will be the sum of the nonlabor component, plus the adjusted labor-related component, unless the SNF qualifies for the cost reporting year adjustment discussed in paragraph 2, below.

Example—Calculation of Adjusted Limit for Freestanding SNF (A) Located in Dallas, Texas.

Labor-related component (Table I)	$46.85
Nonlabor component (Table I)	$11.62
MSA wage index (Table II)	1.0969

Computation of Adjusted Limit

Labor-related component	$46.85
Wage index	×1.0969
Labor component	$51.39
Nonlabor component	+11.62
Adjusted limit	$63.01

b. *Hospital-Based SNFs.* To arrive at a labor-adjusted limit for each hospital-based SNF, we add the labor-related component of the limit and the labor-related component of the A&G add-on for the hospital-based SNF's group and multiply the sum by the wage index developed from wage levels for hospital workers in the area in which the hospital-based SNF is located (see Tables II and III). To arrive at the nonlabor limits, we then add the nonlabor component of the limit and the nonlabor component of the A&G add-on. The adjusted limit that applies to a hospital-based SNF would be the sum of the labor-adjusted limit and add-on and the nonlabor limit and add-on unless the facility qualifies for the cost reporting year adjustment discussed in paragraph 2 below.

Example: Calculation of Adjusted Limits for Hospital-Based SNF (B) Located in Scranton-Wilkes Barre, Pennsylvania.

Labor related component (table I):	
Limit	$69.85
Add-on	$2.53
Nonlabor Component (Table I):	
Limit	$17.31
Add-on	$0.57
MSA wage index (table II)	1.0020

Computation of Adjusted Limit

Labor-related component:	
Limit	$69.85
Add-on	+2.53
	$72.38
Wage index	×1.0020
Adjusted Labor component	$72.52
Nonlabor Component:	
Limit	+17.31
Add-on	+0.57
Adjusted limit	$90.40

2. Adjustment for Cost Reporting Year

If a facility has a cost reporting period beginning after January 1, 1986 and before January 1, 1987, the intermediary would increase the limit that would otherwise apply to the SNF by the factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs and will occur after the date on which the limits are effective.

Example: The following is a computation of a revised hospital-based limit for previously cited SNG (B). Hospital-based SNF (B) has a cost reporting period that begins February 1, 1986. The otherwise applicable limit for SNF (B) is $90.40.

Individual SNF adjusted limit	$90.40
Adjustment factor from Table IV	×1.00407
Revised Limit	$40.77

If a facility uses a cost reporting period that is not 12 months in duration, a special adjustment factor must be calculated. This is necessary because projections are computed to the midpoint of a cost reporting period and the adjustment factors in Table IV are based on an assumed 12-month reporting period. For cost reporting periods of other than 12 months, the calculation must be done for the midpoint of the specific cost reporting period. The SNF's intermediary would obtain this adjustment factor from our central office.

IV. Schedule of Limits

Under the authority of sections 1861(v) and 1888 of the Social Security Act, the following group per diem limits apply to the adjusted SNF inpatient routine service costs reimbursed under Medicare for cost reporting periods beginning on or after January 1, 1986 and before January 1, 1987. Medicare fiscal intermediaries will compute the adjusted limits for SNFs using the methodology set forth in this notice, and will notify each SNF of its applicable limit. These limits, as adjusted by the wage indexes in Tables II and III, and the cost reporting year adjustment factors in Table IV, would remain in effect for cost reporting periods beginning on or after January 1, 1986 and before January 1, 1987.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any major rule. A major rule is defined as any document such as this, that is likely to: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We estimate that the revised limits would result in a net savings to the Medicare program of approximately $30

million through fiscal year 1987 (as compared to the limits that would otherwise be effective for cost reporting periods beginning in fiscal year 1984), distributed as follows:

Fiscal year	Savings (in millions)
1986	$5
1987	25
Total	30

Because the impact would not exceed $100 million annually, or any other threshold criteria under Executive Order 12291, we have determined that this is not a major rule and an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities.

The table below shows the approximate number of hospital-based and freestanding SNFs that would have costs in excess of these proposed revised limits applicable to cost reporting periods beginning on or after January 1, 1986 and before January 1, 1987.

	1986 limits
Number of hospital-based SNFs in data base	417
Number of hospital-based SNFs with costs in excess of limits	263
Number of freestanding SNFs in data base	2,780
Number of freestanding SNFs with costs in excess of limits	1,121

As can be seen, a substantial number of small entities would be affected by implementation of this rule. We consider all SNFs to be small entities under the RFA. However, the revised limits should not result in a facility's revenues being reduced by three percent or more over the limits that would otherwise apply. The Department normally applies a three to five percent threshold criteria for determining whether an impact is significant. Therefore, we have determined, and the Secretary certifies, that this proposed notice would not have a significant economic impact on a substantial number of small entities and an initial regulatory flexibility analysis is not required.

TABLE I—SNF GROUP LIMITS

Location	Labor related component	Nonlabor component [1]
Freestanding:		
MSA	$46.85	$11.62
Non-MSA	48.95	9.79
Hospital-Based:		
MSA:		
Limit	69.85	17.31
Add-on	2.53	0.57
Non-MSA:		
Limit	64.68	12.80
Add-on	1.67	0.42

[1] The nonlabor portion of the limits for SNFs located in the State of Alaska and Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands will be increased by the following cost-of-living adjustments:

	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.150
Maui, Lanai and Molokai	1.200
Hawaii (island)	1.125
Puerto Rico	1.075
Virgin Islands	1.125

TABLE II.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	.9133
Taylor, TX	
Aguadilla, PR	.5539
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	1.0600
Portage, OH	
Summit, OH	
Albany, GA	.9206
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.9035
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensellaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0727
Bernalillo, NM	
Alexandria, LA	1.0018
Rapides, LA	
Allentown-Bethlehem, PA-NJ	1.0617
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	1.1005
Blair, PA	
Amarillo, TX	1.0400
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2360
Orange, CA	
Anchorage, AK	1.5702
Anchorage, AK	
Anderson, IN	.9656
Madison, IN	
Anderson, SC	.8852
Anderson, SC	
Ann Arbor, MI	1.2703
Washtenaw, MI	
Anniston, AL	.8675
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	.9826
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	.6036
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	.9343
Buncombe, NC	
Athens, GA	.8343
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	.9726
Barrow, GA	
Bults, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0988
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	.9826
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1.0210
Kane, IL	
Kendall, IL	
Austin, TX	1.1068
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.1867
Kern,CA	
Baltimore, MD	1.0325
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.9476
Penobscot, ME	
Baton Rouge, LA	1.0477
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	1.0131
Calhoun, MI	
Beaumont-Port Arthur, TX	1.0920
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.1631
Beaver, PA	
Bellingham, WA	[1] 1.0600
Whatcom, WA	.8716
Benton Harbor, MI	
Berrien, MI	1.0184
Bergen-Passaic, NJ	
Bergen, NJ	
Passaic, NJ	
Billings, MT	[1] 1.0268
Yellowstone, MT	
Biloxi-Gulfport, MS	.8701
Hancock, MS	
Harrison, MS	
Binghamton, NY	.9500
Broome, NY	
Tioga, NY	
Birmingham, AL	1.0028
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9900
Burleigh, ND	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Morton, ND	
Bloomington, IN	.9171
Monroe, IN	
Bloomington-Normal, IL	.9404
McLean, IL	
Boise City, ID	1.0414
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1312
Essex, MA	
Middlesex, MA	
Norfork, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	.9902
Boulder, CO	
Bradenton, FL	[1].9513
Manatee, FL	
Brazoria, TX	.8775
Brazoria, TX	
Bremerton, WA	[1].9562
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1497
Fairfield, CT	
Brownsville-Harlingen, TX	.9250
Cameron, TX	
Bryan-College Station, TX	1.0513
Brazos, TX	
Buffalo, NY	.9933
Erie, NY	
Burlington, NC	.8514
Alamance, NC	
Burlington, VT	[1]1.0053
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	.6232
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	.9697
Carroll, OH	
Stark, OH	
Casper, WY	[1]1.0104
Natrona, WY	
Cedar Rapids, IA	[1].9185
Linn, IA	
Champaign-Urbana-Rantoul, IL	1.0274
Champaign, IL	
Charleston, SC	1.0127
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	1.1369
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	.9480
Cabarrus, NC-Gaston, NC	
Lincoln, NC	
Mechlenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	1.0144
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	.9667
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyanne, WY	.9914
Laramie, WY	
Chicago, IL	1.1729
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0344
Butte, CA	
Cincinnati, OH-KY-IN	1.0330
Dearborn, IN	
Boone, KY, Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.8386
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.2337
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0966
EL Paso, CO	
Columbia, MO	1.0069
Boone, MO	
Columbia, SC	.9390
Lexington, SC	
Richland, SC	
Columbus, GA-AL	.8823
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	1.0530
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.9328
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	.8925
Allegany, MD	
Mineral, WV	
Dallas, TX	1.0969
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	[1].8823
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	.9928
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0928
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	1.1875
Volusia, FL	
Decatur, IL	1.0025
Macon, IL	
Denver, CO	1.1875
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	1.0632
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.1681
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.9092
Dale, AL	
Houston, AL	
Dubuque, IA	.9486
Dubuque, IA	
Duluth, MN-WI	.9437
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.9942
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	.9419
El Paso, TX	
Elkhart-Goshen, IN	[1].9185
Elkhart, IN	
Elmira, NY	1.0350
Chemung, NY	
Enid, OK	.9777
Garfield, OK	
Erie, PA	1.0215
Erie, PA	
Eugene-Springfield, OR	.9799
Lane, Or	
Evansville, IN-KY	1.0336
Posey, IN	
Vanderburgh, IN	
Warrick, In	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0219
Clay, MN	
Cass, ND	
Fayetteville, NC	[1].9472
Cumberland, NC	
Fayetteville-Springdale, AR	.8180
Washington, AR	
Flint, MI	1.2322
Genesee, MI	
Florence, AL	.8168
Colbert, AL	
Lauderdale, AL	
Florence, SC	.8723
Florence, SC	
Fort Collins-Loveland, CO	1.0085
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0966
Broward, FL	
Fort Myers-Cape Coral, FL	.9797
Lee, FL	
Fort Pierce, FL	1.0200
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.9592
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	[1].8306
Okaloosa, FL	
Fort Wayne, IN	.9281
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	1.0223
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1791
Fresno, CA	
Gadsden, AL	.9247
Etowah, AL	
Gainesville, FL	.9676
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.1360
Galveston, TX	
Gary-Hammond, IN	1.1581
Lake, IN	
Porter, IN	
Glens Falls, NY	.8287
Warren, NY	
Washington, NY	
Grand Forks, ND	.9796
Grand Forks, ND	
Grand Rapids, MI	1.0030
Kent, MI	
Ottawa, MI	
Great Falls, MT	[1]1.0969
Cascade, MT	
Greeley, CO	[1]1.0412
Weld, CO	
Greene Bay, WI	.9974
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.9478
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.9013
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.9388

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Washington, DC	
Hamilton-Middletown, OH	1.0182
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	1.0705
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-New Middletown-Britain-Bristol, CT	1.1460
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.9146
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1297
Honolulu, HI	
Houma-Thibodaux, LA	.9268
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.1473
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	1.0269
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.9248
Madison, AL	
Indianapolis, IN	1.0768
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.0946
Johnson, IA	
Jackson, MI	1.0466
Jackson, MI	
Jackson, MS	.8769
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.8160
Madison, TN	
Jacksonville, FL	1.0197
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	1.7820
Onslow, NC	
Janesville-Beloit, WI	.9342
Rock, WI	
Jersey City, NJ	1.0558
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.9089
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol, TN	
Scott, VA	
Washington, VA	
Johnstown, PA	1.0247
Cambria, PA	
Somerset, PA	
Joliet, IL	1.1197
Grundy, IL	
Will, IL	
Joplin, MO	1.0228
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.2472
Kalamazoo, MI	
Kankakee, IL	1.0917
Kankakee, IL	
Kansas City, MO-KS	1.0451
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	* 1.0144
Kenosha, WI	
Killeen-Temple, TX	.9766
Bell, TX	
Coryell, TX	
Knoxville, TN	.9163
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9984
Howard, IN	
Tipton, IN	
LaCrosse, WI	* .9786
LaCrosse, WI	
Lafayette, LA	1.0085
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.9018
Tippecanoe, IN	
Lake Charles, LA	1.0512
Calcasieu, LA	
Lake County, IL	1.0859
Lake, IL	
Lakeland-Winter Haven, FL	.9716
Polk, FL	
Lancaster, PA	1.0776
Lancaster, PA	
Lansing-East Lansing, MI	1.0469
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	* .8542
Webb, TX	
Las Cruces, NM	* .8423
Dona Ana, NM	
Las Vegas, NV	1.2816
Clark, NV	
Lawrence, KS	* .9464
Douglas, KS	
Lawton, OK	* 1.0286
Comanche, OK	
Lewiston-Auburn, ME	* .9666
Androscoggin, ME	
Lexington-Fayette, KY	.9868
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	1.0835
Allen, OH	
Auglaize, OH	
Lincoln, NE	.9171
Lancaster, NE	
Little Rock-North Little Rock, AR	1.0491
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8769
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	1.0164
Lorain, OH	
Los Angeles-Long Beach, CA	1.3166
Los Angeles, CA	
Louisville, KY-IN	1.1027
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	1.0452
Lubbock, TX	
Lynchburg, VA	.8955
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	1.0467
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0893
Dane, WI	
Manchester-Nashua, NH	.9613
Hillsboro, NH	
Merrimack, NH	
Mansfield, OH	.9240
Richland, OH	
Mayaguez, PR	.5689
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission TX	.8699
Hidalgo, TX	
Medford, OR	.9923
Jackson, OR	
Melbourne-Titusville, FL	.9814
Brevard, FL	
Memphis, TN-AR-MS	1.0482
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Miami-Hialeah, FL	1.1662
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0492
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.1019
Midland, TX	
Milwaukee, WI	1.0306
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.0722
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.9336
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1080
Stanislaus, CA	
Monmouth-Ocean, NJ	.9713
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.9205
Ouachita, LA	
Montgomery, AL	.9534
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	* .9823
Delaware, IN	
Muskegon, MI	* .9589
Muskegon, MI	
Naples, FL	* 1.1659
Collier, FL	
Nashville, TN	1.1642
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.2369

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9641
Bristol, MA	
New Haven-West Haven-Waterbury-Meriden, CT	1.0952
New Haven, CT	
New London-Norwich, CT	1.0517
New London, CT	
New Orleans, LA	1.0184
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3378
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1801
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8665
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9730
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk, City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk, City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.3334
Alameda, CA	
Contra Costa, CA	
Ocala, FL	1.9666
Marion, FL	
Odessa, TX	1.0451
Ector, TX	
Oklahoma City, OK	1.0480
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0758
Thurston, WA	
Omaha, NE-IA	.9667
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	1.0286
Orange, NY	
Orlando, FL	1.0135
Orange, FDL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	1.9013
Daviess, KY	
Oxnard-Ventura, CA	1.1859
Ventura, CA	
Panama City, FL	1.8955
Bay, FL	
Parkersburg-Marietta, WV-OH	1.0302
Washington, OH	
Wood, WV	
Pascagoula, MS	1.1340
Jackson, MS	
Pensacola, FL	.9063
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	1.1391
Peoria, IL	
Tazewell, IL	
Woodford, IL	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Philadelphia, PA-NJ	1.1796
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0869
Maricopa, AZ	
Pine Bluff, AR	1.9092
Jefferson, AR	
Pittsburgh, PA	1.1529
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0278
Berkshire, MA	
Ponce, PR	.6883
Juana Diaz, PR	
Ponce, PR	
Portland, ME	.9692
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1393
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	.9132
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.1219
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	.9991
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Statewide, RI	
Washington, RI	
Provo-Orem, UT	.9243
Utah, UT	
Pueblo, CO	1.1232
Pueblo, CO	
Racine, WI	1.0078
Racine, WI	
Raleigh-Durham, NC	1.0295
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	.8823
Pennington, SD	
Reading, PA	1.0412
Berks, PA	
Redding, CA	1.0444
Shasta, CA	
Reno, NV	1.2472
Washoe, NV	
Richland-Kennewick, WA	.9749
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.9472
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1300
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.9796
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0277
Olmsted, MN	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Rochester, NY	1.0207
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.0479
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2022
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.1053
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.9117
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	.9937
Buchanan, MO	
St. Louis, MO-IL	1.0653
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, Or	1.0268
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.3264
Monterey, CA	
Salt Lake City-Ogden, UT	.9409
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.9589
Tom Green, TX	
San Antonio, TX	.9518
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.1559
San Diego, CA	
San Francisco, CA	1.3993
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.3538
Santa Clara, CA	
San Juan, PR	.6151
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luquillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Juan, PR	
Toa, Baja, PR	
Trojilio Alto, PR	
Vega Alta, PR	
Vega, Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1123
Santa Barbara, CA	
Santa Cruz, CA	1.2056
Santa Cruz, CA	
Santa Fe, NM	1.0716
Los Alamos, NM	
Santa Fe, Nm	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Santa Rosa-Petaluma, CA	1.1632
Sonoma, CA	
Sarasota, FL	1.0007
Sarasota, FL	
Savannah, GA	.9661
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	1.0020
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.1088
King, WA	
Snohomish, WA	
Sharon, PA	1.0431
Mercer, PA	
Sheboygan, WI	.8771
Sheboygan, WI	
Sherman-Denison, TX	.8107
Grayson, TX	
Shreveport, LA	1.0931
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	1.0034
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	.9279
Minnehaha, SD	
South Bend-Mishawaka, IN	.9756
St. Joseph, IN	
Spokane, WA	1.0916
Spokane, WA	
Springfied, IL	1.1340
Menard, IL	
Sangamo, IL	
Springfied, MO	.9380
Christian,MO	
Greene, MO	
Springfield, MA	1.0331
Hampden, MA	
Hampshire, MA	
State College, PA	1.0972
Centre, Pa	
Steubenville-Weirton, OH -WV	.9642
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1238
San Joaquin, CA	
Syracuse, NY	1.0457
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0883
Pierce, WA	
Tallahassee, FL	.9041
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	1.0169
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.8955
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	1.0094
Miller, AR	
Bowie, TX	
Toledo, OH	1.1218
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	1.1129
Shawnee, KS	
Trenton, NJ	1.0465
Mercer, NJ	
Tucson, AZ	1.0502
Pima, AZ	
Tulsa, OK	1.0490
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1.0315
Tuscaloosa, AL	
Tyler, TX	1.0381
Smith, TX	
Utica-Rome, NY	.9690
Herkimer, NY	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2754
Napa, CA	
Solano, CA	
Vancouver, WA	* 1.0617
Clark, WA	
Victoria, TX	* .9265
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9814
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0758
Tulare, CA	
Waco, TX	.8914
McLennan, TX	
Washington, DC-MD-VA	1.1678
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince, William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9706
Black Hawk, IA	
Bremer, IA	
Wausau, WI	* .9362
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0331
Palm Beach, FL	
Wheeling, WV-OH	.9869
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.1190
Butler, KS	
Sedgwick, KS	
Wichita Falls, TX	.8979
Wichita, TX	
Williamsport, PA	.9930
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0366
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.9193
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	.9489
Worcester, MA	
Yakima, WA	.9526
Yakima, WA	
York, PA	.9923
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.1231
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0610
Sutter, CA	
Yuba, CA	

[1] Approximate value for area.

TABLE III.—WAGE INDEX FOR RURAL AREAS

Nonurban Area	Wage index
Alabama	.7767
Alaska	1.4473
Arizona	.9268
Arkansas	.7800
California	1.0417
Colorado	.8619
Connecticut	1.0053
Delaware	.9116
Florida	.8840
Georgia	.8305
Hawaii	1.1584
Idaho	.8726
Illinois	.8911
Indiana	.8458
Iowa	.8092

TABLE III.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban Area	Wage index
Kansas	.8321
Kentucky	.8542
Louisiana	.8626
Maine	.8795
Maryland	.9185
Massachusetts	1.0355
Michigan	.8049
Minnesota	.8692
Mississippi	.8016
Missouri	.8261
Montana	.8775
Nebraska	.7345
Nevada	1.0113
New Hampshire	1.0080
New Mexico	.8719
New York	.8747
North Carolina	.8568
North Dakota	.8309
Ohio	.9192
Oklahoma	.8776
Oregon	.9513
Pennsylvania	1.0442
Puerto Rico	.5693
Rhode Island	* .9308
South Carolina	.8031
South Dakota	.7437
Tennessee	.7709
Texas	.8423
Utah	.7823
Vermont	.8646
Virginia	.8641
Virgin Islands	* 1.0000
Washington	.9562
West Virginia	.8855
Wisconsin	.8514
Wyoming	.9613

[1] Approximate value for area.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTORS [1]

If a SNF cost reporting period begins—	The adjustment factor is—
Nov. 1, 1985	1.0035
Dec. 1, 1985	1.0070
Jan. 1, 1986	1.0106
Feb. 1, 1986	1.0142
Mar. 1, 1986	1.0189
Apr. 1, 1986	1.0231
May 1, 1986	1.0273
June 1, 1986	1.0315
July 1, 1986	1.0357
Aug. 1, 1986	1.0400
Sept 1, 1986	1.0442

[1] Based on compounded projected market basket inflation rates of 4.3 percent and 5.0 percent for 1986 and 1987 respectively. These adjustment factors are subject to change based on later estimate of cost increases.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTORS [1]

If a SNF cost reporting period begins	The adjustment factor is—
Feb. 1, 1986	1.00407
Mar. 1, 1986	1.00818
Apr. 1, 1986	1.01227
May 1, 1986	1.01646
June 1, 1986	1.02054
July 1, 1986	1.02470
Aug. 1, 1986	1.02887
Sept. 1, 1986	1.03306
Oct. 1, 1986	1.03727
Nov. 1, 1986	1.04150
Dec. 1, 1986	1.04574

[1] Based on compounded projected market basket inflation rates of 4.3 percent and 5.0 percent for 1986 and 1987 respectively. These adjustment factors are subject to change based on later estimates of cost increases or decreases.

The schedule of limits set forth in this notice would apply to cost reporting period beginning on or after January 1, 1986 and before January 1, 1987.

APPENDIX.—DERIVATION OF "MARKET BASKET" INDEX FOR SNF ROUTINE SERVICE COSTS

[Cost reporting periods beginning on or after Jan. 1, 1986 and before Jan. 1, 1987]

Category of Costs	Relative [1] importance 1986	Forecaster [2] percent changes (1981–1987)	Price variable used
Payroll Expenses	61.25	DRI-CFS	Percentage changes in average hourly earnings of employees in nursing and personal care facility. (SIC 805) Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly), Table C-2.
Food	6.27	DRI-MM	Processed foods and feeds component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
		DRI-MM	Food and beverage component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 22.
Employees Benefits	9.06	DRI-MM	Supplements to wages and salaries per worker in nonagricultural establishments. For supplements to wages—Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Table 1.11. For total employment—Source: U.S. Dept of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly), Table B-4.
Fuel and other utilities	5.07	DRI-MM	A. Implicit price deflator-consumption of fuel oil and coal (derived from fuel oil component of Consumer Price Index). Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business (monthly)*, Table 7.11.
		DRI-MM	B. Implicit price deflator-consumer of electricity (derived from electricity component of Consumer Price Index). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis.
		DRI-MM	C. Implicit price deflator for natural gas (derived from utility (piped gas component of Consumer Price Index). Source: Same as electricity above.
		DRI-CFS	Water and sewage maintenance component of the Consumer Price Index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Miscellaneous	4.82	DRI-MM	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Other business services	5.14	DRI-MM	Services component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Supplies	3.30	DRI-MM	All Items Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Drugs	1.74	DRI-CFS	Pharmaceutical preparations, ethical component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Producer Prices and Price Indexes* (monthly), Table 6.
Health services	1.35	DRI-CFS	Physician services component of Consumer Price Index for all urban consumers. Sources: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.

[1] The basic weights for all major categories of skilled nursing home costs were obtained from the DHEW-National Center for Health Statistics (NCHS) National Nursing Home Surveys (NNHS) for 1972 and 1976 for homes certified for participation in the Medicare program. See *Nursing Home Costs 1972, United States: National Nursing Home Survey, August 1973–April 1974, DHEW, NCHS: National Nursing Home Survey: 1977 Summary for the United States, Vital and Health Statistics, Series 13, Number 43.*

A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. In calendar year 1977 each "price" variable has an index of 100.0. The relative routine service cost weights change each period in accordance with price changes for each price variable. Cost categories with relatively higher "price" increases get relatively higher cost weights and vice versa.

[2] DRI-CFS refers to Data Resources, Inc., Cost Forecasting Service (CFS 852), 1750 K Street NW., Washington, D.C. 20006.

[3] DRI-MM refers ot Data Resources, Inc., Trendlong (485), 29 Hartwell Avenue, Lexington, Massachusetts 02173.

(Secs. 1102, 1814(b), 1861(v)(1), 1866(a), 1871, and 1888 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: August 13, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: November 6, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-27767 Filed 11-21-85; 8:45 am]

BILLING CODE 4120-01-M

[BERC-333-PN]

Medicare Program; Schedule of Limits on Skilled Nursing Facility Inpatient Routine Service Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed schedule of limits would revise the single Medicare reimbursement limit that was published in the **Federal Register** (47 FR 42894) on September 29, 1982 insofar as that notice applied to hospital-based skilled nursing facility (SNF) inpatient routine service costs. Separate reimbursement limits for freestanding and hospital-based SNFs are required by the Deficit Reduction Act of 1984 (Pub. L. 98-369). This notice proposes different cost limit schedules for hospital-based SNFs for cost reporting periods beginning on or after October 1, 1982 and prior to July 1, 1984, and for cost reporting periods beginning on or after July 1, 1984. Freestanding SNF cost limits would remain the same as those published in the September 29, 1982 cost limits notice.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by December 23, 1985.

ADDRESS: Address comments in writing to the following address: Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: BERC-333-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you perfer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC; or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–333–PN.

Comments will be available for public inspection as they are received, beginning approximately three weeks after the date of publication of this document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT:
Steve Kirsh, (301) 594–9465.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1) of the Social Security Act (the Act) authorizes the Secretary to set prospective limits on allowable costs incurred by a provider of services that will be reimbursed under Medicare. These limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Implementing regulations appear at 42 CFR 405.460.

Under this authority, we published in the **Federal Register** (47 FR 42894) on September 29, 1982, a schedule of limits applicable to cost reporting periods beginning on or after October 1, 1982. That schedule consists of a single set of cost limits for hospital-based and freestanding SNFs, as required by section 102 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248). Section 102 added section 1861(v)(1)(E)(i) to the Act, which eliminated separate limits for hospital-based and freestanding SNFs for cost reporting periods beginning on or after October 1, 1982. After we published these limits, section 605 of the Social Security Amendments of 1983, Pub. L. 98–21, placed a one-year moratorium on the application of section 102 and required input from the Secretary on the use of the single limits. Implementation of section 605 did not occur in anticipation of the legislation contained in the Deficit Reduction Act of 1984.

II. Deficit Reduction Act

Section 2319 of the Deficit Reduction Act of 1984 (Pub. L. 98–369), enacted on July 18, 1984, revised sections 1861 (v)(1)(E) and (v)(7) of the Act and added a new section 1888 to the Act. This legislation provides new authority for the payment of routine service costs to skilled nursing facilities. The provisions of the September 29, 1982 single limits schedule continue to apply to freestanding SNFs, but under this legislation, separate limits will apply to hospital-based SNFs. Section 2319 of Pub. L. 98–369 also provides that, for cost reporting periods beginning on or after October 1, 1982 and before July 1, 1984, the cost limits for routine services for urban and rural hospital-based SNFs must be 112 percent of the mean of the respective routine costs for urban and rural hospital-based skilled nursing facilities.

Prior to the single schedule of limits required by Pub. L. 97–248, separate schedules were published. Under these schedules, the SNF cost limits for inpatient routine services were calculated at 112 percent of the mean of the routine costs for freestanding and hospital-based SNFs, respectively. Further, the routine costs considered for each comparison group were the routine costs attributable to the particular group, and these costs were divided between labor-related costs and nonlabor costs in urban and rural standard metropolitan statistical areas (SMSAs) as defined by the Bureau of Labor Statistics (BLS). The comparison groups were as follows:

- Hospital-based SNFs—SMSA (urban)
- Hospital-based SNFs—Non-SMSA (rural)
- Freestanding SNFs—SMSA (urban)
- Freestanding SNFs—Non-SMSA (rural)

Section 2319 of Pub. L. 98–369 also provides that for cost reporting periods beginning on or after July 1, 1984—

- Separate cost limits for hospital-based and freestanding SNFs will continue;
- Cost limits for freestanding SNFs will continue to be 112 percent of the mean freestanding inpatient routine service costs for SNFs in urban and rural areas, respectively;
- Cost limits for hospital-based SNFs will be set at the appropriate freestanding limit plus 50 percent of the difference between the freestanding limit and 112 percent of mean hospital-based inpatient routine service costs for urban and rural SNFs respectively; and
- Cost differences between hospital-based and freestanding SNFs attributable to excess overhead allocations (as determined by the Secretary) resulting from title XVIII principles are to be recognized as an add-on to the cost limit for hospital-based SNFs as determined by the Secretary.

This notice would implement the changes for hospital-based SNF cost limits mandated by section 2319 of Pub L. 98–369 for cost reporting periods beginning on or after October 1, 1982. For cost reporting periods beginning on or after October 1, 1982, the freestanding SNF cost limits would remain the same as those published in the September 29, 1982 cost limits notice. (However, please note that elsewhere in this issue of the **Federal Register** we are proposing another revised schedule of limits for both hospital-based and freestanding SNFs effective for cost reporting periods beginning on or after October 1, 1985. This revised schedule of limits is based on the most recent data available for hospital industry wages, SNF costs, and the SNF market basket.)

III. Tables and Appendices

The following tables and appendices are provided after section XI. Schedule of Limits:

Cost Reporting Periods Beginning on or After October 1, 1982 and before July 1, 1984

Table A–I—Hospital-Based SNF Group Limits
Table A–II—Wage Index for Urban Areas
Table A–III—Wage Index for Rural Areas
Table A–IV—Cost Reporting Year Adjustment Factors
Appendix A–I—Derivation of Market Basket Index for SNF Routine Service Costs.
Appendix A–II—SMSA/NECMA Constituent Counties

Cost Reporting Periods Beginning on or After July 1, 1984

Table B–I—Hospital-based SNF Group Limits
Table B–II—Wage Index for Urban Areas
Table B–III—Wage Index for Rural Areas
Table B–IV—Cost Reporting Year Adjustment Factors
Appendix B–I—Derivation of Market Basket Index for SNF Routine Service Costs

IV. Hospital-Based SNF Limits—Major Provisions

There are two revised schedules of cost limits for hospital based SNFs. One schedule would apply to cost reporting periods beginning on or after October 1, 1982 and prior to July 1, 1984 (see table A–I). The other would apply to cost reporting periods beginning on or after July 1, 1984 (see table B–I). These revised schedules of limits would provide for the following:

A. Excluded Costs

For hospital-based SNFs, the limits on SNF per diem inpatient routine services cost would be adjusted by excluding capital-related costs (see section VIII. Methodology for Determining per Diem Routine Service Cost Limit). Inpatient routine service costs in the data base have also been adjusted to reflect the elimination of the inpatient routine nursing salary costs differential (see

section V. Summary of Changes in Methodology).

B. Urban/Rural Location

We would use a classification system based on whether a SNF is located within an SMSA or metropolitan statistical area (MSA) (see section V. Summary of Changes in Methodology).

C. Data

Actual SNF routine service per diem cost data from Medicare cost reports to derive the limits would be used (see section VIII. Methodology for Determining per Diem Routine Service Cost Limit).

D. Market Basket

We would use a market basket index that we developed to reflect changes in the prices of goods and services purchased by SNFs (see sections V. Summary of Changes in Methodology and VI. Summary of Retained Methodology; Appendix A–I for cost reporting periods beginning on or after October 1, 1982 and before July 1, 1984, and Appendix B–I for cost reporting periods beginning on or after July 1, 1984).

E. Wage Index

We have included a wage index for cost reporting periods beginning on or after October 1, 1982 and before July 1, 1984 (see Tables A–II and A–III) and an updated wage index for cost reporting periods beginning on or after July 1, 1984 (see Tables B–II and B–III). See sections V. Summary of Changes in Methodology and VI. Summary of Retained Methodology for discussions of the wage index.

F. Cost of Living Adjustment

A cost of living adjustment to the nonlabor component of the limits for SNFs located in Alaska, Hawaii, Puerto rico and the Virgin Islands is included (see section VI. Summary of Retained Methodology).

G. Computation of the Limits

For cost reporting periods beginning on or after October 1, 1982 and before July 1, 1984, the hospital-based SNF limits would be set at 112 percent of the mean per diem routine service costs of each hosptial-based group (that is, urban or rural).

Separate limits for hospital-based and freestanding SNFs would continue for cost reporting periods beginning on or after July 1, 1984. The separate limit for freestanding SNFs in urban and rural areas would continue to be 112 percent of the mean per diem routine service costs of urban and rural freestanding facilities, respectively. However, limits for urban or rural hospital-based SNFs would be set at the appropriate limit applicable to freestanding facilities plus 50 percent of the difference between the limit for freestanding facilities and 112 percent of the mean per diem routine service costs for hospital-based facilities plus an A&G add-on as determined by the Secretary (see section V. Summary of Changes in Methodology).

H. A&G Add-on

For cost reporting periods beginning on or after July 1, 1984, we would provide for an A&G add-on to the limit. The add-on adjustment is specifically related to the allocation of costs in the A&G cost center. (See section V. Summary of Changes in Methodology.)

I. Schedule of limits

Based on the methodology described above, we developed a revised schedule of per diem dollar limits (see Tables A–I and B–I).

V. Summary of Changes in Methodology

The revised schedules of limits incorporate the following changes in the methodology (changes from the previous methodology applicable to cost reporting periods beginning on or after October 1, 1981 and prior to October 1, 1982) used to determine the cost limits:

A. Changes Applicable to Cost Reporting Periods Beginning on or After October 1, 1982 and Before July 1, 1984.

1. Statutory Change

We would use separate schedules of limits for hospital-based and freestanding SNFs and the SNFs would be paid on the basis of the policy for calculating limits for reimbursement that was in effect prior to the passage of Pub. L. 98–369.

Under this system, the limits for freestanding facilities would be set at 112 percent of the mean per diem routine service costs for freestanding urban and rural facilities, respectively. Similarly, the limits for hospital-based facilities would be set at 112 percent of the mean per diem routine service costs for urban and rural hospital-based facilities, respectively.

2. Elimination of Inpatient Routine Nursing Salary Cost Differential

In the past, we recognized a per diem rate above the facility's average costs for all patients for inpatient routine nursing care furnished to aged Medicare patients. (The differential was also applied to pediatric and maternity patients, who also are assumed to require a greater amount of routine nursing services than other patients.) This was called the "nursing salary cost differential". The differential was not an add-on to the total routine nursing salary costs incurred by a provider, but rather a reallocation of the actual routine nursing salary costs between aged, pediatric, and maternity patients and all other classes of patients. It presumed that, on the average, aged pediatric and maternity patients receive more routine nursing services than do other patients.

The effect of the nursing differential was that the Medicare program recognized a higher than average routine per diem cost for aged, pediatric, and maternity patients and a lower than average per diem cost for all other classes of patients. (Disabled Medicare beneficiaries are counted in the "all other" category unless they are also pediatric or maternity patients, and the lower than average per diem is applicable to that class of patient.)

The total impact of the differential on a particular facility's Medicare reimbursement varied, depending on the provider's patient mix. If all of the provider's patients were aged, pediatric, and maternity, no differential was applicable.

We recognized a nursing salary differential equal to 8.5 percent of the provider's average per diem nursing salary costs for SNFs. However, section 103 of Pub. L. 97–248 amended section 1861(v)(1) of the Act to state that "regulations may not provide for any inpatient routine salary cost differential as a reimbursable cost for hospitals and skilled nursing facilities." According to its terms, section 103 is effective for all cost reporting periods subject to the cost limits proposed in this notice. Therefore, the limits properly would not recognize any nursing salary cost differential.

Section 103 has also necessitated an adjustment of the cost limits because all of our current cost report data incorporates the inpatient routine nursing salary differential in Medicare costs. We have adjusted the SNF data to exclude the differential and the cost limits proposed below reflect this adjustment. Because the majority of days of care in a SNF are aged days, the effect of the adjustment on the limit is not significant.

3. Use of Combined Wage Index

We have changed the methodology used to compute the limits to include a combined wage index. This change is purely technical and, as discussed further below, has no effect on the amount of the limit for any SNF.

In developing and applying the 1979, 1980, and 1981 cost limit schedules, we

used a hospital wage index to account for differences in the level of labor-related costs among the areas in which SNFs are located. To develop this wage index, we first calculated the national average wage for hospital workers in urban (SMSA or NECMA) areas, and a separate national average wage for hospital workers in nonurban (that is, non-SMSA and non-NECMA) areas. We then divided the average wage for each urban and nonurban area by the appropriate national average (urban or nonurban). This calculation resulted in a separate index value for each urban area that reflected the wage level for that area relative to the national average of all urban areas. The calculation also resulted in an index value for each nonurban area that reflected the wage level for that area relative to the national average for all nonurban areas. We call this type of index, which relates the average wage for each individual area to separate urban or nonurban national averages, a "split" index.

Because the wage index we used to calculate the September 30, 1981 limits is a split index, there are some cases in which the index value for an urban area is lower than the value for an adjacent nonurban area. The use of the split index has caused concern and confusion among SNFs in urban areas. To avoid further confusion on this point, we have, in developing the hospital-based SNF limits in this notice, used a "combined" wage index that relates the average area wages for both urban and nonurban areas to a single national average wage for all areas. Although the change from a split to a combined wage index has no effect on either the accuracy or the dollar amount of any SNF's limit, we believe use of a combined index will permit direct comparison of the index values for urban and rural, and thus make it easier for SNFs to understand how the wage index values for their areas were computed. The following example demonstrates that the final result using a split wage index, is identical.

Example

(1) *Split Wage Index* = .8824
Labor share = $44.33
Labor deflated costs: $44.33 divided by .8824 = $50.24
Mean labor deflated costs = $45.85
Area labor share limit: $45.85 times .8824 = $40.46

(2) *Combined Wage Index* = .9894
Labor share = $44.33
Labor deflated costs: $44.33 divided by .9894 = $44.80
Mean labor deflated costs = $40.89
Area labor share limit: $40.89 times .9894 = $40.46

The following hypothetical sample array is the source of the data used in this example. The split and combined wage index used in the hypothetical sample array were derived as shown below.

HYPOTHETICAL SAMPLE

Area	Average monthly hospital wage	Split wage index	Combined wage index
1	$900	0.7059	0.7916
2	1,050	.8235	.9235
3	1,125	.8824	.9894
4	1,500	1.1765	1.3193
5	1,800	1.4118	1.5831
Total	6,375		

Urban or rural national average monthly hospital wage =

$$\frac{\text{Total urban or rural average monthly hospital wage}}{\text{Number urban or rural areas}} = \frac{6375}{5} = \$1275$$

Combined national average monthly hospital wage =

$$\frac{\text{Total urban average monthly hospital wages plus total rural average monthly hospital wages*}}{\text{Number urban areas plus number rural areas}} = \frac{16375 + 4990^{*}}{10} = \$1137$$

*Total rural average monthly hospital wages are computed from average monthly hospital wages for five rural areas.

Example

(1) *Computation of Split Wage Index*
Area 1 average monthly hospital wage = $900
Urban or rural national average monthly hospital wage = $1275
Area 1 split wage index: $900 divided by $1275 = .7059

(2) *Computation of Combined Wage Index*
Area 1 average monthly hospital wage = $900
Combine average monthly hospital wage = $1137
Area 1 combined wage index: $900 divided by $1137 = .7916

HYPOTHETICAL SAMPLE ARRAY

1	2	3		4	
Area	Labor share 80.22	Wage index		Labor deflated cost [1] using—	
		Split	Combined	Split wage index	Combined wage index
1	40.10	.7059	.7916	$56.81	$50.66
2	37.50	.8235	.9235	45.54	40.61
3	44.33	.8824	.9894	50.24	44.80
4	51.32	1.1765	1.3193	43.62	38.90
5	46.65	1.4118	1.5831	33.04	29.47
Mean Labor Deflated Arrayed Costs =				45.85	40.89

[1] Column 2 divided by corresponding value in column 3.

5	6		7		8	
Area	Wage index		Mean labor deflated cost		Area limit	
	Split	Combined	Split wage index	Combined wage index	(Labor share) [1] split wage index	Using Combined wage index
1	.7059	.7916	45.85	40.89	32.37	32.37
2	.8235	.9235	45.85	40.89	37.76	37.76
3	.8824	.9894	45.85	40.89	40.46	40.46
4	1.1765	1.3193	45.85	40.89	53.94	53.94
5	1.4118	1.5831	45.85	40.89	64.73	64.73

[1] Column 7 multiplied by appropriate value in column 6

In developing the wage index for the limits, we have also used approximate, rather than actual, index values for some areas. (These approximate values are identified by asterisks in Table A–II, A–III, B–II, and B–III.) We have done this because the BLS, which supplies the data on wages and numbers of employees that we use to calculate the wage index, has informed us that its confidentiality requirements prohibit it from disclosing actual data for areas that include fewer than three reporting units. (A reporting unit need not be a single hospital. "Reporting unit" is defined by BLS as the smallest unit for which data are recorded on the employer's contribution report. For example, two facilities in the same area owned by one employer could appear as one reporting unit.) To make it possible to calculate limits for these areas, we have asked the BLS to identify the areas having wage index values numerically closest to, but not less than, the areas for which it cannot supply actual data. In the case of each area for which actual data are unavailable, we have substituted the wage index value identified by BLS as being closest to the

actual value. We believe that the use of approximate rather than actual values for these areas will not affect the accuracy of the limits significantly, and will assure that no SNF's limit is reduced because actual data for its area are unavailable.

We have also, in developing the wage index used for the limits, exluded data for Federal government hospitals. Because these hospitals typically use national pay scales, the amounts they pay their employees do not necessarily reflect area wage levels. They also do not normally participate in the Medicare program and, therefore, excluding these data is appropriate. For cost reporting periods beginning on or after October 1, 1982 through June 30, 1984, we have included wage indexes in Table A–II for those newly designated SMSAs and NECMAs that were classified as such as a result of the 1980 census. (See appendix A–II for listing of newly designated SMSAs and NECMAs.) For cost reporting periods beginning on or after July 1, 1984, we have changed designations from SMSA to MSA as discussed in Paragraph B.2. below. In addition, we now have wage indexes for Puerto Rico. This means that the hospital-based cost limits in this notice can now be applied to SNFs in Puerto Rico. (See Tables A–II, A–III, B–II and B–III.)

B. Changes Applicable to Cost Reporting Periods Beginning on or After July 1, 1984

1. Statutory Changes

a. We would separate schedules of limits for hospital/based and freestanding SNFs.

b. The cost limits for hospital-based SNFs in *urban* areas would be equal to the limit for freestanding SNFs located in urban areas plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based SNFs located in urban areas exceeds the limit for freestanding SNFs located in urban areas plus the administrative and general (A&G) add-on.

c. The cost limits for hospital-based SNFs in *rural* areas would be equal to the limit for freestanding SNFs located in rural areas plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based SNFs located in rural areas exceeds the limit for freestanding SNFs located in rural areas plus the A&G add-on.

The following illustration is provided for the calculations of the hospital-based SNF limits for cost reporting periods beginning on or after July 1, 1984 (Table B–I):

COST LIMIT DATA HOSPITAL-BASED SNF'S

112 percent of hospital-based mean cost	Urban (MSA)	Rural (non-MSA)
81.329 percent labor	$87.61	$75.66
18.671 percent nonlabor	22.15	15.13
Total	109.76	90.79

CALCULATION OF 50 PERCENT DIFFERENCE BETWEEN 112 PERCENT OF HOSPITAL-BASED MEAN COST AND THE FREESTANDING LIMIT

	Labor	Nonlabor
Urban (MSA)		
112 percent of hospital-based mean cost	$87.61	$22.15
Freestanding SNF limit (47 FR 42894)[1]	−43.91	−12.09
Difference	43.70	10.06
50 percent of difference	21.85	5.03
Plus freestanding SNF limit (47 FR 42894)[1]	43.91	12.09
Hospital-based SNF limit	65.76	17.12
Rural (Non-MSA)		
112 percent of Hospital-based mean cost	$75.66	$15.13
Freestanding SNF limit (47 FR 42894)[1]	−46.61	−10.48
Difference	29.05	4.65
50 percent of difference	14.53	2.33
Plus freestanding SNF limit (47 FR 42894)[1]	46.61	10.48
Hospital-based SNF limit	61.14	12.81

[1] Limit adjusted to July 1, 1984.

d. The A&G add-on would be calculated by first determining the difference in average A&G per diem costs allocated directly to the inpatient routine SNF cost center between hospital-based and freestanding SNFs in MSA and non-MSA locations. This difference would then be divided by the appropriate hospital-based SNFs average routine cost per diem to arrive at the percentage of A&G costs in routine cost per diem. The percentage would then be multiplied by 50 percent of the amount that 112% of the hospital-based mean cost exceeds the freestanding limit, as described above.

The resulting amount would then be subtracted from the A&G difference between hospital-based and freestanding SNFs. This adjustment would be made so that the A&G add-on would not duplicate the portion of the dollar difference of A&G costs already contained in 50 percent of the amount by which 112% of the hospital-based mean cost exceeds the freestanding limits.

The resulting A&G amount would be multiplied by the percentage of SNF costs attributable to wages, fringe benefits, health service costs, business service costs, and other miscellaneous expenses to arrive at the labor and nonlabor dollar amounts in Table B–I. the A&G add-on would then be added to the hospital-based limits.

After examining the expenses that constitute the bulk of the cost differences between hospital-based and freestanding facilities, we have concluded that, apart from the A&G cost center, the allocation procedures are not the chief contributor to the cost difference between the two types of facilities. We note that hospitals and SNFs, regardless of type, use the same rules of allocation.

The following illustrates our calculation of the A&G add-on:

A&G DIFFERENCE

	Urban	Rural
1. Hospital-based SNF A&G Mean [1]	$7.64	$6.38
2. Freestanding SNF A&G Mean [1]	−3.63	−3.63
3. Difference	$4.01	$2.75
Amount of A&G Included in the 50% Difference between 112% of the Hospital-based Mean Cost and the Freestanding Limit		
4. A&G Difference (from line 3)	$4.01	$2.75
5. Average Routine Cost (112% of the Hospital-based SNF mean cost equals $109.76 divided by 112% for urban area and $90.79 divided by 112% for rural area)[2]	$97.99	$81.05
6. Percent of A&G Difference to Routine Cost (line 4 divided by line 5)	4.09	3.39
7. Fifty percent of difference between 112% of the hospital-based SNF mean cost and freestanding SNF limit	$26.88	$16.86
8. Amount of A&G Difference included on line 7 (line 6 times line 7)	$1.10	$0.57
A&G Add-On		
9. A&G Difference from line 3	$4.01	$2.75
10. Less Amount from line 8	1.10	−.57
11. A&G Add-On (line 9 less line 10)	$2.91	$2.18

[1] Wage Deflated Means.
[2] See computation for total cost limit data for hospital-based SNFs in section VII.

	Labor	Non-labor
Urban A&G add-on = $2.91	$2.37	$0.54
Rural A&G add-on = $2.18	1.77	.41

2. Other Changes

a. The classification system used to develop the limits contains a technical change regarding the definition of urban and nonurban Areas. Schedules of limits previously published used SMSAs and non-SMSAs (and NECMAs and non-NECMAs in New England) to designate urban and nonurban locations.

On June 30, 1983, OMB implemented changes in the terminology and definitions that it uses to classify urban areas (OMB press release dated June 27, 1983, OMB–83–20). Effective June 30,

1983 the term "standard metropolitan statistical areas" was replaced by the term "metropolitan statistical areas".

A metropolitan statistical area is a geographical area having a large population nucleus with adjacent communities that have a high degree of economic and social integration with the population nucleus. Standard metropolitan statistical area definitions were first developed and issued about 30 years ago.

Data available for metropolitan areas include statistics on population, housing, industry, trade, current employment and payroll data, local housing markets, and labor markets.

The changes in terminology and definitions implemented by OMB on June 30, 1983 resulted from a complete review of all metropolitan area data. OMB used commuting and other statistics from the 1980 census and new standards for establishing and defining metropolitan statistical areas. A comprehensive review and revision of metropolitan area definitions is undertaken every ten years following the completion of each decennial census.

Metropolitan statistical areas are designated and defined following a set of standards prepared by the Federal Committee on MSA's which advises OMB on metropolitan area definitions. Under the 1980 standards, an area qualifies for recognition as an MSA in one of two ways: (1) A city of at least 50,000 population, or (2) an urbanized area of at least 50,000 with a total metropolitan population of at least 100,000. In addition to the county containing the main city, an MSA may also include additional counties that have close economic and social ties to the central county. MSAs are defined in terms of entire counties, except in the six New England States. (OMB press release dated January 5, 1983, OMB–83–1.)

The MSA definitions and wage indexes are incorporated into the schedule of limits for cost reporting periods beginning on or after July 1, 1984.

b. For cost reporting periods beginning on or after July 1, 1984, we would make an adjustment to the limits if the estimated market basket index rate, as explained in section VI. SUMMARY OF RETAINED METHODOLOGY, differs from the actual rate by at least $\frac{3}{10}$ of one percentage point. This is a change from the market basket adjustment used in the September 29, 1982 notice because in that notice the limits were adjusted to reflect the actual rate of increase in the market basket index only when the actual rate of increase exceeded the estimated rate by at least $\frac{3}{10}$ of one percentage point. This proposed schedule allows for an adjustment to the limits whenever the actual rate differs from the estimated rate by at least $\frac{3}{10}$ of one percentage point (that is, higher or lower). This change would continue the protection afforded SNFs when the rate of increase in the prices of the goods and services they consumed was greater than the estimated rate assumed by the limits. It would also assure that expenditures are not in excess of a level appropriate to economic trends during the time the limits are in effect, thus moderating the financial pressures on the Medicare Trust Fund. This policy change would allow the trust fund to benefit from any moderation in the rate of inflation, which is in the interest of current and future Medicare beneficiaries. By utilizing the actual rate in the market basket index, the limits would more accurately reflect price changes that occur during the time the limits are in effect.

Following the end of each year that the limits are in effect, HCFA would determine the actual rate of increase or decrease in the market basket for the year. The data necessary to make this determination are usually available in the second quarter of the following year. This would allow us to make the determination of the actual rate by June 30 of each year. If the actual rate differs from the estimated rate by at least $\frac{3}{10}$ of one percentage point, the limits would be adjusted to reflect the actual rate of increase or decrease in the market basket for the preceding year. We would advise the intermediaries of these adjusted limits and publish them in the **Federal Register**. The adjusted limits would be used by the intermediaries to determine the amount of the final settlement for the cost reporting periods ending in the year for which the actual rate of increase or decrease has been determined.

VI. Summary of Retained Methodology

The following discussion summarizes the elements that we have retained for hospital-based SNFs from the methodology that was applicable to cost reporting periods beginning on or after October 1, 1981 and prior to October 1, 1982.

A. Separate Group Limits for Labor-Related and Nonlabor Components of Per Diem Routine Service Costs

We have retained separate group limits for the labor-related and nonlabor components of per diem routine service cost. We calculate these separate limits by first obtaining actual SNF per diem inpatient routine service cost data for each SNF. Next, to make the data reflect current conditions more accurately, we adjust the data from the midpoints of the cost reporting periods represented in the data collection to the midpoint of the initial cost reporting period to which the limits would apply. We then separate each SNF's per diem cost into labor-related and nonlabor portions, and divide the labor-related portion by the wage index for the SNF's location (see section B. below). We then compute separate group means for the labor-related and nonlabor components and multiply each group mean by 112 percent.

B. Adjustment of SNF Cost Data by Wage Index

We are again using a hospital industry wage index to account for area wage differences. Use of the hospital industry index is necessary since industry-specific data are not available on SNF wages. Because hospitals and SNFs generally compete in essentially the same labor market for employees, we believe an index based on geographic variations in hospital wages provides an accurate measure of geographic variations in wages paid by SNFs.

We developed the wage index from hospital wage data obtained from the BLS. The data used are those for the "hospital industry", a standard BLS reporting category. For cost reporting periods beginning on or after October 1, 1982 and before July 1, 1984, the wage indices are based on data for calendar year 1980 equivalent to those published in the **Federal Register** on September 29, 1982 (47 FR 42894) for freestanding SNFs. For cost reporting periods beginning on or after July 1, 1984, the wage indices are based on data for calendar year 1982.

We have been advised by the BLS that the wage index values for some areas are based on estimated 1982 data and may need to be revised based on actual data that were not available when we computed the wage index values shown in Tables B–II and B–III.

If we receive additional 1982 data that require further changes in any wage index, we will notify the Medicare intermediaries of the corrected index and will direct them to recalculate the limits for the affected SNFs.

Additionally, we want to note that we are considering the HCFA survey-based hospital wage index for use with the hospital prospective payment system. In the June 10, 1985 proposed rule concerning changes to the prospective payment system for fiscal year 1986, we requested comments on this possibility and its implications (50 FR 24377). If we

decide to adopt the HCFA survey-based wage index for the hospital prospective payment system, we may also use it for SNF cost limits to be effective with cost reporting periods beginning on or after October 1, 1985.

We are also exploring the feasibilty of developing a SNF industry-specific wage index system for the employee wage and compensation analysis data taken from the Medicare cost reports. If this alternative proves to be feasible and would provide a more accurate measure of SNF wage variations, we may use this type of index in future cost limit schedules.

C. Use of SNF Market Basket

We have continued to base the cost limits on reported costs, adjusted for actual and projected cost increases by applying the SNF market basket index. This market basket is used to adjust the SNF cost data to reflect cost increases occurring between the cost reporting periods represented in the data collection to the midpoints of the cost reporting periods to which the limits would apply.

The market basket comprises the most commonly used categories of SNF routine service expenses. The categories we are using are based primarily on those used by the National Center for health Statistics in its National Nursing Home Surveys.

The categories of expenses are weighted according to the estimated proportion of SNF routine service costs attributable to each category (see appendices A–I and B–1). The wieghts for all major categories of SNF costs are based on the National Nursing Home Surveys for 1972 and 1976. These are the most current and comprehensive sources of national data on the distribution of costs in SNFs. (The second column of the appendices specifies the weights used for each category.)

In developing the market basket index, we obtained historical and projected rates of increase in the prices of goods and services in each category. The market basket index table, in the third and fourth columns, identifies the price variables used and the source of the forecast for calendar years 1980 through 1984 (Appendix A–1) and 1981 through 1986 (Appendix B–1).

The market basket index also provides for adjustments to be made in the limits if our forecasts of economic trends prove erroneous. For cost reporting periods beginning on or after October 1, 1982 thorugh June 30, 1984, if the final rate of increase in the market basket index for a year exceeds the estimated rate of increase by at least .3 of one percentage point the limits would be adjusted. For cost reporting periods beginning on or after July 1, 1984, if the final rate *differs* from the estimated rate of increase by at least .3 of one percentage point, the limits would be adjusted. We would advise the Medicare intermediaries to use the actual rate to adjust each SNF's limit at final settlement of the SNF's cost report.

D Application of the Hospital Wage Index to Employee Benefits, Health Service Costs, Costs of Business Services, and Other Miscellaneous Expenses

In developing the current schedule, we applied the wage index discussed above to five categories of labor-related costs: wages, employee benefits, health service costs, business service costs, and other miscellaneous costs.

We have retained this method in developing this revised schedule of limits. The proportion of adjusted routine service costs we adjust by the wage index is 80.22 percent for cost reporting periods beginning on or after October 1, 1982 and before July 1, 1984, and 81.33 percent for cost reporting periods beginning on or after July 1, 1984.

For purposes of applying the wage index, employee benefits include such items as FICA tax, health insurance, life insurance, facility contributions to employee retirement funds, and all other compensation that the SNF records in the "employee health and welfare" cost center on its Medicare cost report. (The Medicare Provider Reimbursement Manual, HCFA-Pub. 15–I, Chapter 4, and the instructions to the HCFA cost reporting forms, HCFA-Pub. 15–II, describe the types of costs that are to be recorded in that cost center.)

Health service costs are a category used by the National Nursing Home Survey conducted in 1977 by the Office of Health Research, Statistics and Technology, National Center for Health Statistics of the Public Health Services. They include the costs of routine services that are purchased under arrangement from outside sources.

Business services costs include costs of banking, contract laundry, telephone, and other services SNFs purchase at retail from outside suppliers.

Other miscellaneous costs include various types of routine operating costs not allocated to any other category of the market basket.

Thus, we would apply the wage index to the total portion of cost (80.22 or 81.33 percent as appropriate) attributable to wages, fringe benefits, health service costs, business service costs, and other miscellaneous expenses rather than to the wage portion (61.26 percent for cost reporting periods beginning on or after October 1, 1982 through June 30, 1984 or 61.14 percent for cost reporting periods beginning on or after July 1, 1984) only. We would continue this method because our analysis of the data shows that area variations in routine per diem costs in these additional categories are closely related to area variations in prevailing wage levels. We believe that applying the wage index to the other categories of labor-related costs specified above, rather than to wages only, results in individual limits that are more equitable and more appropriate to each SNF's actual market environment.

E. Limits Set at 112 Percent of Mean

For cost reporting periods beginning on or after October 1, 1982, through June 30, 1984, we would maintain the revised limits at 112 percent of the average labor-related and average non-labor costs of each group.

F. Cost-of-Living Adjustment for Alaska, Hawaii, Puerto Rico, and the Virgin Islands

To avoid disadvantaging SNFs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, we would continue to provide a cost-of-living adjustment for these States. This is an adjustment of the nonlabor component of the limit that applies to these areas, based on the amount of the most recently determined cost-of-living differentials developed by the Office of Personnel Management. Since we adjust the labor-related component by the applicable wage index, this cost-of-living adjustment would apply only to the nonlabor component.

G. Exception to Cost Limits

A provider could request an exception to the proposed cost limits under the provisions of 42 CFR 405.460(f). The request would be made to HCFA through the Medicare fiscal intermediary.

VII. Regulatory Impact Statement and Flexibility Analysis

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for documents such as this that are likely to : (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or (3) result in significant adverse effects on competition, employment, investment, productivity,

innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We estimate that the revised limits for hospital-based SNFs would result in a net loss of savings to the Medicare program of approximately $175 million through fiscal year 1986. Since approximately $125 million of the $175 million would be paid in one year, there appears to be an effect on the economy that would require an initial regulatory impact analysis. However, the effect would be exclusively a result of the statutory requirement and not a result of this notice. Therefore, we have determined that this would not be a major rule under Executive Order 12291 and an initial regulatory impact analysis is not required. Nonetheless, we have prepared the following analysis. The loss of savings would be distributed as follows:

Fiscal year	Loss of savings from 1982 revised limits (in millions)	Loss of savings from 1984 revised limits (in millions)	Total loss of savings (in millions)
1985	$90	$35	$125
1986		50	50
Total	90	85	175

The above estimates were determining by calculating program savings as a result of the previous limits in effect and comparing these savings with the program savings that would result from the revised limits. Program savings are the additional amounts that would be reimbursable without the limits. Therefore, we are describing the net effect as a loss of savings. That is, we would pay hospital-based SNF's approximately $175 million mor for fiscal years 1985 and 1986.

Actual payments of additional amounts to hospital-based SNFs have only recently begun. We issued an intermediary letter in February, 1985 (Transmittal No. A85–2) instructing intermediaries to begin making payments to affected SNFs based on interim cost limits. These payments will represent tentative settlement. Final settlement will be made following publication of this notice in fianl.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities. A substantial number of small entities would be affected by implementation of this rule. We consider all SNFs to be small entities under the RFA. We also believe that the impact on these facilities could be significant if they took no major action to restrain costs. These effects are due to statutory change and alternatives are not available because the method of computation is mandated by section 2319 of Pub. L. 98–369. However, we are voluntarily providing an initial regulatory flexibility analysis.

The table below shows the approximate number of hospital-based SNFs that would have costs in excess of, respectively,. the single limits previously in effect, the proposed revised limits effective for cost reporting periods beginning on or after October 1, 1982 and before July 1, 1984, and the proposed revised limits effective for cost reporting periods beginning on or after July 1, 1984.

	Single limits [1]	Revised Limits [1] (1982-1984)	Revised Limits [2] (1984-1985)
Number of hospital-based SNFs with costs in excess of limits	413	133	216
Total hospital-based SNFs in data base	488	488	417
Percent of hospital-based SNFs over Limits	85	27	52

[1] Based on 1981 data.
[2] Based on 1982 data.

The above table does not include a small number of facilities, which were too small in bedsize, or had costs outside the normal cost range (that is, excessively high or low). Inclusion of cost data from these facilities in setting the limits would inappropriately skew the distribution of average costs and would result in limits that would not be representative of normal operating costs.

As can be seen, approximately 85 percent of hospital-based SNFs had costs in excess of the single limits in 1982. Under the proposed revised limits effective October 1, 1982, about 27 percent of these SNFs would have costs in excess of the limits. From this data, we estimate that 280 hospital-based SNFs (57 percent of the total) would be affected by the increased limits effective October 1, 1982. (Although freestanding SNFs would not be affected by this proposed notice, for comparison purposes, approximately 30 percent of all freestanding SNFs had costs in excess of the limits in FY 1982.) As shown in the third column, 216 hospital-based SNFs (about 52 percent of total) would have costs in excess of the proposed revised limits effective July 1, 1984.

In summary, the proposed revised limits would impact on approximately 200 to 300 hospital-based SNFs. In no case would the effects be adverse. The affected SNFs would each receive additional payments as a result of significantly higher limits. The amount of additional payment to a facility would depend on the facility's costs as related to the limits.

We compared the relative impacts of the proposed limits on urban and rural facilities. The findings are as follows:

PERCENT OF HOSPITAL-BASED SNFS WITH COSTS EXCEEDING THE PROPOSED LIMITS

[Rounded to nearest percentage]

	Oct. 1, 1982 limits	July 1, 1984 limits
Urban	30	57
Rural	24	47

As would be expected, urban facilities are more likely to have costs in excess of the proposed limits.

VIII. Methodology for Determining Per Diem Routine Service Cost Limit

A. Development of Published Limits

1. Data

We have developed the limits by using actual SNF inpatient routine service cost data, less capital-related costs allocated to general inpatient routine services, obtained from Worksheet D–1 of the latest Medicare cost reports available as of November 15, 1981 for cost reporting periods beginning on or after October 1, 1982 through June 30, 1984 and November 1982 for cost reporting periods beginning on or after July 1, 1984. Capital-related costs include interest, depreciation, insurance, rent, and fixed asset related costs that are normally included in the depreciation accounts on the cost reporting form used for Medicare reimbursement purposes.

We have also adjusted the data from Worksheet D–1 to exclude the inpatient routine nursing salary cost differential.

We adjusted these data using the market basket index discussed above, to inflate costs from the cost reporting periods in the data base to the midpoint of the first cost reporting period to which the limits will apply. The annual percentage increases in the market basket over the previous year that we used for this projection are:

	Cost reporting periods beginning on or after Oct. 1, 1982	Cost reporting periods beginning on or after July 1, 1984
1979	9.4	
1980	10.1	
1981	9.8	9.8
1982	6.9	6.6
1983	6.9	4.8
1984	7.0	4.3
1985		3.4
1986		4.3

[1] Forecasted increase.

For cost reporting periods beginning on July 1, 1984 and later, an adjustment would be made to the limits if the estimated market basket rate differs from the actual rate by at least .3 of one percent point. Should this occur, we would notify the Medicare intermediaries of the actual rate of increase and advise them to adjust each SNF cost limit at the time of final settlement.

2. Use of Wage Index to Adjust Cost Data

We divided each SNF's adjusted per diem routine service costs into labor-related and nonlabor portions. We determined the labor-related portion by multiplying each SNF's adjusted per diem routine service cost by 80.22 percent for cost reporting periods beginning on or after October 1, 1982 and before July 1, 1984 and 81.33 percent for cost reporting periods beginning on or after July 1, 1984, which is the labor-related portion of cost from the market basket. We then divided the labor-related portion of each SNF's per diem cost by the wage index applicable to the SNF's location (see Tables A–II, A–III, B–II, and B–III) to arrive at an adjusted labor-related portion of routine cost.

3. Group Means

We calculated separate means of labor-related and nonlabor adjusted routine service costs for each SNF group established in accordance with the SNF's SMSA (or MSA)/NECMA or non-SMSA (or MSA)/non-NECMA location.

4. Components of Limit

For cost reporting periods beginning on October 1, 1982 through June 30, 1984, for each SNF group, we multiplied the mean labor-related and mean nonlabor costs by 112 percent (see Table A–I).

For cost reporting periods beginning on or after July 1, 1984, the labor component and the nonlabor component of the freestanding SNF group limit (see 47 FR 42894) is inflated to July 1, 1984. We then subtracted the freestanding limit as of July 1, 1984 for each group from 112 percent of the hospital-based mean for each group and multiplied the result by 50 percent. The result is then added to the appropriate freestanding limit as of July 1, 1984 to arrive at the hospital-based limit in Table B–I.

B. Adjustment of Published Limits

1. Cost Reporting Periods Beginning on or After October 1, 1982 and Before July 1, 1984

a. *Adjustment of Labor-Related Component by Wage Index.* To arrive at a labor-adjusted limit for each SNF, we multiply the labor-related component of the limit for the SNF's group by the wage index developed from wage levels for hospital workers in the area in which the SNF is located. (See Tables A–II and A–III.) The adjusted limit that applies to a SNF would be the sum of the nonlabor component,[1] plus the adjusted labor-related component, unless the SNF qualified for the cost reporting year adjustment discussed in item b. below.

Example—Calculation of Adjusted Limit for Hospital-based SNF (A) Located in Dallas, Texas

Labor-Related Component, $79.99 (published in Table A–I)
Nonlabor Component, $22.17 (published in Table A–I)
SMSA Wage Index, 1.0222 (published in Table A–II)

Computation of Adjusted Limit

Labor-related component	$79.99
Wage index from Table A–II	×1.0222
Labor component	$81.77
Nonlabor component	+22.17
Adjusted limit	$103.94

b. *Adjustment for Cost Reporting Year.* If an SNF has a cost reporting period beginning after October 1, 1982, the intermediary would increase the limit that would otherwise apply to the SNF by the factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the monthly increase that we derived by dividing the projected annual increase in the market basket by twelve. This adjustment would be needed to account for price increases that occur after the date on which the limits are effective.

[1] The nonlabor component would be further adjusted for cost of living if the SNF is located in Alaska, Hawaii, or Puerto Rico.

Example—SNF (A) has a cost reporting period that begins July 1, 1983

The otherwise applicable limit for SNF (A) is $103.94.

Computation of Revised SNF Limit

Individual SNF Adjusted Limit	$103.94
Adjustment Factor from Table A–IV	×1.05225
Revised Limit	$109.37

If an SNF uses a cost reporting period that is not 12 months in duration, a special adjustment factor must be calculated. This results from the fact that projections are computed to the midpoint of a cost reporting period and the adjustment factors in Table IV are based on an assumed 12-month reporting period. For cost reporting periods of other than 12 months, the calculation must be done for the midpoint of the specific cost reporting period. The SNF's intermediary will obtain this adjustment factor from HCFA central office.

2. Cost Reporting Periods Beginning on or After July 1, 1984

a. *Adjustment of Labor-Related Component by Wage Index.* To arrive at a labor-adjusted limit for each hospital-based SNF, we add the labor-related component of the limit and the labor-related component of the A&G add-on for the hospital-based SNF's group and multiply the sum by the wage index developed from wage levels for hospital workers in the area in which the hospital-based SNF is located. (See Tables B–II and B–III.) To arrive at the nonlabor limits, we then add the nonlabor component of the limit and the nonlabor component of the A&G add-on. The adjusted limit that applies to a hospital-based SNF would be the sum of the labor-adjusted limit and add-on and the nonlabor limit and add-on unless the facility qualifies for the cost reporting year adjustment discussed in paragraph c. below.

Example: Calculation of Adjusted Limits for Hospital-Based SNF (B) located in rural Arkansas:

Labor-Related Component (published in Table B–I); Nonlabor Component, (published in Table B–I); Labor-Related Component, Hospital-Based SNF A&G "add-on" (published in Table B–I); Nonlabor Component, Hospital-Based SNF A&G "add-on" (published in Table B–I); Non-MSA Wage Index (published in Table B–II).

Computation of Adjusted Limit

Labor-related component	$61.14
A&G "add-on"	+1.77
	$62.91
Wage Index from Table B–II	×.7788
Adjusted Labor Component	$48.99
Nonlabor component	+12.81
Nonlabor component A&G add-on	+.42
Adjusted limit	$62.21

b. *Adjustment for Cost Reporting Year.* If a facility has a cost reporting period beginning after July 1, 1984 the intermediary would increase the limit that would otherwise apply to the hospital-based SNF by the factor from Table B–IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the monthly increase that we derived by dividing the projected annual increase in the market basket by twelve. This adjustment is needed to account for price increases that occur after the date on which the limits are effective.

Example: The following is a computation of a revised hospital-based limit for SNF (B). Hospital-based SNF (B) has a cost reporting period that begins August 1, 1984. The otherwise applicable limit for SNF (B) is $62.21.

Individual SNF adjustment limit	$62.21
Adjustment factor from Table B–IV	×1.00283
Revised Limit	$62.39

If a facility uses a cost reporting period that is not 12 months in duration, a special adjustment factor must be calculated. This results from the fact that projections are computed to the midpoint of a cost reporting period and the adjustment factors in Table B–IV are based on an assumed 12-month reporting period. For cost reporting periods of other than 12 months, the calculation must be done for the midpoint of the specific cost reporting period. The hospital-based SNF's intermediary would obtain this adjustment factor from HCFA central office.

IX. Schedule of Limits

Under the authority of section 1861(v) of the Social Security Act and section 2319 of Pub. L. 98–369, the following group per diem limits would apply to the adjusted SNF inpatient routine service costs reimbursed under Medicare for cost reporting periods beginning on or after October 1, 1982 and before July 1, 1984 (see Table A–I) and cost reporting periods beginning on or after July 1, 1984 (see Table B–I). Medicare fiscal intermediaries would compute the adjusted limits for SNFs using the methodology set forth in this notice, and would notify each SNF of its applicable limit. These limits, as adjusted by the wage indexes in Tables A–II and A–III for cost reporting periods beginning on or after October 1, 1982 and before July 1, 1984 and Tables B–II and B–III for cost reporting periods beginning on or after July 1, 1984, and the cost reporting year adjustment factors in Tables A–IV and B–IV. Table B–IV would remain in effect until replaced by a revised schedule of limits published in final in a notice in the **Federal Register.**

TABLE A–I.—SNF GROUP LIMITS

[Cost reporting periods beginning on or after Oct. 1, 1982 and before July 1, 1984]

Location	Labor-related component	Nonlabor component [1]
Hospital-based: [2]		
SMSA	$79.99	$22.17
Non-SMSA	68.92	15.29

[1] The nonlabor portion of the limits for SNFs located in the States of Alaska and Hawaii and the commonwealth of Puerto Rico will be increased by the following cost-of-living adjustments:

[2] The data used to develop the shcedule of separate limits for hospital-based SNFs were obtained from the Medicare cost reports of hospital-based SNFs available as of November 15, 1981, just as was done for the freestanding limits. The basic limits methodology is now the same as that in force as of October 1, 1981 (48 FR 48026—September 30, 1981). These limits were derived using the same methodology as that used for determining the freestanding limits. This methodology is described in our FEDERAL REGISTER publication on September 29, 1982 (47 FR 42894).

	Factor
Alaska	1.225
Anchorage	1.225
All others	1.25
Hawaii (islands):	
Oahu	1.175
Kauai	1.175
Molokai	1.175
Maui and Lanai	1.175
Hawaii (island)	1.10
Puerto Rico	1.075

TABLE A–II.—WAGE INDEX FOR URBAN AREAS

[Cost reporting periods beginning on or after Oct. 1, 1982 and before July 1, 1984]

Urban area (SMSA)	Wage index
Abilene, TX	.8360
Akron, OH	1.0997
Albany, GA	[1].8712
Albany-Schenectady-Troy, NY	.9645
Albuquerque, NM	1.0380
Alexandria, LA	.9619
Allentown-Bethlehem-Easton, PA-NJ	1.0506
Altoona, PA	1.0463
Amarillo, TX	.9449
Anaheim-Santa Ana-Garden Grove, CA	1.2853
Anchorage, AK	1.5992
Anderson, IN	.9850
Anderson, SC	.8712
Ann Arbor, MI	1.2883
Anniston, AL	.8682
Appleton-Oshkosh, WI	.9620
Arecibo, PR	.5481
Asheville, NC	1.0033
Athens, GA	.8811
Atlanta, GA	.9416
Atlantic City, NJ	1.0417
Augusta, GA-SC	.9462
Auston, TX	1.0158

TABLE A–II.—WAGE INDEX FOR URBAN AREAS—Continued

[Cost reporting periods beginning on or after Oct. 1, 1982 and before July 1, 1984]

Urban area (SMSA)	Wage index
Bakersfield, CA	1.1813
Baltimore, MD	1.1352
Bangor, ME	.9422
Baton Rouge, LA	.9906
Battle Creek, MI	1.0366
Bay City, MI	[1]1.0656
Beaumont-Port Arthur-Orange, TX	.9407
Bellingham, WA	[1].9161
Benton Harbor, MI	.8639
Billings, MT	.9762
Biloxi-Gulfport, MS	.8379
Binghamton, NY-PA	.9463
Birmingham, AL	1.0023
Bismarck, ND	.9430
Bloomington-Normal, IL	.8168
Bloomington, IN	[1].9100
Boise City, ID	1.0565
Boston-Lowell-Brockton-Lawrence-Haverhill, MA-NH	1.1287
Bradenton, FL	[1].9296
Bremerton, WA	[1].8993
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1904
Brownsville-Harlingen-San Benito, TX	.9764
Bryan-College Station, TX	.8228
Buffalo, NY	.9939
Burlington, NC	.8785
Burlington, VT	[1].9554
Caguas, PR	.6007
Canton, OH	.9637
Casper, WY	[1]1.0638
Cedar Rapids, IA	[1].9416
Champaign-Urbana-Rantoul, IL	1.0359
Charleston, SC	1.0332
Charleston, WV	1.0869
Charlotte-Gastonia, NC	.9767
Charlottesville, VA	1.0694
Chattanooga, TN-GA	.9985
Chicago, IL	1.2013
Chico, CA	1.0813
Cincinnati, OH-KY-IN	1.0959
Clarksville-Hopkinsville, TN-KY	.8519
Cleveland, OH	1.2148
Colorado Springs, CO	1.0890
Columbia, MO	1.1981
Columbia, SC	.9874
Columbus, GA-AL	.9195
Columbus, OH	1.0803
Corpus Christi, TX	.9762
Cumberland, MD-WV	.9221
Dallas-Fort Worth, TX	1.0222
Danville, VA	[1].8960
Davenport-Rock Island-Moline, IA-IL	.9812
Dayton, OH	1.1240
Daytona Beach, FL	.8804
Decatur, IL	[1]1.0023
Denver-Boulder, CO	1.1952
Des Moines, IA	1.0597
Detroit, MI	1.2516
Dubuque, IA	.9686
Duluth-Superior, MN-WI	.9252
Eau Claire, WI	.9102
El Paso, TX	.8765
Elkhart, IN	[1].9100
Elmira, NY	1.0249
Enid, OK	.9247
Erie, PA	.9804
Eugene-Springfield, OR	.9554
Evansville, IN-KY	1.0438
Fargo-Moorhead, ND-MN	1.0057
Fayetteville, NC	[1].8618
Fayetteville-Springdale, AR	.8155
Flint, MI	1.1849
Florence, AL	.8223
Florence, SC	.8445
Fort Collins, CO	.9121
Fort Lauderdale-Hollywood, FL	1.0830
Fort Myers, FL	.9389
Fort Smith, AR-OK	.9318
Fort Walton Beach, FL	[1].7921
Fort Wayne, IN	.9222
Fresno, CA	1.2345
Gadsden, AL	.9316
Gainesville, FL	.9496
Galveston-Texas City, TX	1.0940
Gary-Hammond-East Chicago, IN	1.1438
Glens Falls, NY	.9078
Grand Forks, ND-MN	.8671
Grand Rapids, MI	.9905

TABLE A–II.—WAGE INDEX FOR URBAN AREAS—Continued

[Cost reporting periods beginning on or after Oct. 1, 1982 and before July 1, 1984]

Urban area (SMSA)	Wage index
Great Falls, MT	[1].940
Greeley, CO	[1].015
Green Bay, WI	1.010
Greensboro-Winston-Salem-High Point, NC	.946
Greenville-Spartanburg, SC	.980
Hagerstown, MD	1.041
Hamilton-Middletown, OH	1.070
Harrisburg, PA	1.060
Hartford-New Britain-Bristol, CT	1.176
Hickroy, NC	.850
Honolulu, HI	1.186
Houston, TX	1.122
Huntington-Ashland, WV-KY-OH	.953
Huntsville, AL	.882
Indianapolis, IN	1.055
Iowa City, IA	1.181
Jackson, MI	[1].056
Jackson, MS	.919
Jacksonville, FL	.977
Jacksonville, NC	[1].905
Janesville-Beloit, WI	.891
Jersey City, NY	1.135
Johnson City-Kingsport-Bristol, TN-VA	.897
Johnstown, PA	1.064
Joplin, MO	.896
Kalamazoo-Portage, MI	1.218
Kankakee, IL	.978
Kansas City, MO-KS	.984
Kenosha, WI	[1].113
Killeen-Temple, TX	.918
Knoxville, TN	.908
Kokomo, IN	1.008
LaCrosse, WI	[1].040
Lafayette, LA	1.007
Lafayette-West Lafayette, IN	.925
Lake Charles, LA	.920
Lakeland-Winter Haven, FL	.899
Lancaster, PA	1.076
Lansing-East Lansing, MI	1.071
Laredo, TX	[1].863
Las Cruces, NM	[1].773
Las Vegas, NV	1.213
Lawrence, KS	[1].967
Lawton, OK	[1].961
Lewiston-Auburn, ME	[1].887
Lexington-Fayette, KY	.932
Lima, OH	1.039
Lincoln, NE	.934
Little Rock-North Little Rock, AR	1.046
Long Branch-Asbury Park, NY	1.027
Longview, TX	.875
Lorain-Elyria, OH	1.043
Los Angeles-Long Beach, CA	1.317
Louisville, KY-IN	1.003
Lubbock, TX	.903
Lynchburg, VA	.874
Macon, GA	.943
Madison, WI	1.045
Manchester-Nashua, NH	.976
Mansfield, OH	.935
Mayaguez, PR	.590
McAllen-Pharr-Edinburg, TX	.826
Medford, OR	.996
Melbourne-Titusville-Cocoa, FL	.965
Memphis, TN-AR-MS	1.059
Miami, FL	1.162
Midland, TX	[1].005
Milwaukee, WI	1.056
Minneapolis-ST. Paul, MN-WI	1.009
Mobile, AL	.940
Modesto, CA	1.054
Monroe, LA	.932
Montgomery, AL	.988
Muncie, IN	[1].959
Muskegon-Muskegon Heights, MI	.980
Nashville-Davidson, TN	1.040
Nassau-Suffolk, NY	1.286
New Bedford-Fall River, MA	.992
New Brunswick-Perth Amboy-Sayreville, NY	1.061
New Haven-Westhaven-Waterbury-Meriden, CT	1.090
New London-Norwich, CT	1.093
New Orleans, LA	.984
New York, NY-NJ	1.397
Newark, NY	1.206
Newark, OH	.959
Newburgh-Middletown, NY	1.048
Newport News-Hampton, VA	.925

TABLE A–II.—WAGE INDEX FOR URBAN AREAS—Continued

[Cost reporting periods beginning on or after Oct. 1, 1982 and before July 1, 1984]

Urban area (SMSA)	Wage index
Norfolk-Virginia Beach-Portsmouth, VA-NC	1.032
Northeast, Pennsylvania	1.044
Ocala, FL	[1].941
Odessa, TX	[1].929
Oklahoma City, OK	1.016
Olympia, WA	[1].054
Omaha, NE-IA	.985
Orlando, FL	.989
Owensboro, KY	[1].880
Oxnard-Simi Valley-Ventura, CA	1.405
Panama City, FL	[1].885
Parkersburg-Marietta, WV-OH	1.006
Pascagoula-Moss Point, MS	[1].128
Paterson-Clifton-Passaic, NJ	1.082
Pensacola, FL	.923
Peoria, IL	1.113
Petersburg-Hopewell, VA	.932
Philadelphia, PA-NJ	1.194
Phoenix, AZ	1.142
Pine Bluff, AR	[1].783
Pittsburgh, PA	1.149
Pittsfield, MA	1.033
Ponce, PR	.783
Portland, ME	1.011
Portland, OR-WA	1.120
Portsmouth-Dover-Rochester, NH-ME	.854
Poughkeepsie, NY	1.114
Providence-Warwick-Pawtucket, RI	1.038
Provo-Orem, UT	.940
Pueblo, CO	1.085
Racine, WI	.950
Raleigh-Durham, NC	1.036
Reading, PA	1.009
Redding, CA	1.067
Reno, NV	[1].333
Richland-Kennewick, WA	.967
Richmond, VA	.937
Riverside-San Bernardino-Ontario, CA	1.220
Roanoke, VA	.994
Rochester, MN	1.043
Rochester, NY	1.057
Rockford, IL	1.055
Rock Hill, SC	.918
Sacramento, CA	1.213
Saginaw, MI	1.128
St. Cloud, MN	.863
St. Joseph, MO	1.026
St. Loius, MO-IL	1.039
Salem, OR	1.083
Salinas–Seaside-Monterey, CA	1.231
Salisbury-Concord, NC	1.040
Salt Lake City-Ogden, UT	.937
San Angelo, TX	.852
San Antonio, TX	.959
San Diego, CA	1.233
San Francisco-Oakland, CA	1.333
San Jose, CA	1.326
San Juan, PR	.680
Santa Barbara-Santa Maria-Lompoc, CA	1.110
Santa Cruz, CA	1.136
Santa Rosa, CA	1.433
Sarasota, FL	1.009
Savannah, GA	.974
Seattle-Everett, WA	1.048
Sharon, PA	1.004
Sheboygan, WI	.892
Sherman-Denison, TX	.887
Shreveport, LA	1.054
Sioux City, IA-NE	.967
Sioux Falls, SD	.924
South Bend, IN	.915
Spokane, WA	1.102
Springfield, IL	1.123
Springfield, MO	.097
Springfield, OH	1.041
Springfield-Chicopee-Holyoke, MA	1.029
State College, PA	[1].138
Steubenville-Weirton, OH-WV	.990
Stockton, CA	1.346
Syracuse, NY	1.516
Tacoma, WA	1.072
Tallahasse, FL	[1].946
Tampa-St. Petersburg, FL	1.006
Terre Haute, IN	.885
Texarkana-TX-Texarkana, AR	1.176
Toledo, OH-MI	1.142
Topeka, KS	1.078
Trenton, NY	1.090

TABLE A–II.—WAGE INDEX FOR URBAN AREAS—Continued

[Cost reporting periods beginning on or after Oct. 1, 1982 and before July 1, 1984]

Urban area (SMSA)	Wage index
Tucson, AZ	1.049
Tulsa, OK	1.022
Tuscaloosa, AL	1.038
Tyler, TX	.989
Utica-Rome, NY	.997
Vallejo-Fairfield-Napa, CA	1.675
Victoria, TX	.860
Vineland-Millville-Bridgeton, NJ	1.007
Visalia-Tulare-Porterville, CA	1.446
Waco, TX	.834
Washington, DC-MD-VA	1.190
Waterloo-Cedar Falls, IA	.868
Wausau, WI	[1].956
West Palm Beach-Boca Raton, FL	.989
Wheeling, WV-OH	.995
Wichita, KS	1.041
Wichita Falls, TX	.857
Williamsport, PA	.989
Wilmington, DE-NJ-MD	1.109
Wilmington, NC	.900
Worcester-Fitchburg-Leominster, MA	.964
Yakima, WA	.968
York, PA	1.011
Youngstown-Warren, OH	1.135
Yuba City, CA	1.128

[1] Approximate value for area.

TABLE A–III.—WAGE INDEX FOR RURAL AREAS

[Cost reporting periods beginning on or after Oct. 1, 1982 and before July 1, 1984]

Rural area (non-SMSA)	Wage index
Alabama	.816
Alaska	1.413
Arizona	.910
Arkansas	.791
California	1.066
Colorado	.851
Connecticut	1.065
Delaware	.940
Florida	.905
Georgia	.858
Hawaii	1.265
Idaho	.809
Illinois	.896
Indiana	.882
Iowa	.820
Kansas	.820
Kentucky	.850
Louisiana	.851
Maine	.896
Maryland	.992
Massachusetts	1.087
Michigan	1.047
Minnesota	.827
Mississippi	.811
Missouri	.847
Montana	.880
Nebraska	.724
Nevada	.974
New Hampshire	1.045
New Jersey	.955
New Mexico	.923
New York	.907
North Carolina	.881
North Dakota	.820
Ohio	.930
Oklahoma	.852
Oregon	.956
Pennsylvania	1.042
Puerto Rico	.643
Rhode Island	[1].962
South Carolina	.815
South Dakota	.773
Tennessee	.798
Texas	.814
Utah	.800
Vermont	.880
Virginia	.848
Washington	.945
West Virginia	.929
Wisconsin	.829
Wyoming	.978

[1] Approximate value for area.

TABLE A-IV.—COST REPORTING YEAR ADJUSTMENT FACTORS*

[Cost reporting periods beginning on or after Oct. 1, 1982 and before July 1, 1984]

If a SNF cost reporting period begins—	The adjustment factors is[1]—
Nov. 1, 1982	1.00575
Dec. 1, 1982	1.01150
Jan. 1, 1983	1.01725
Feb. 1, 1983	1.02308
Mar. 1, 1983	1.02892
Apr. 1, 1983	1.03475
May 1, 1983	1.04058
June 1, 1983	1.04642

TABLE A-IV.—COST REPORTING YEAR ADJUSTMENT FACTORS*—Continued

[Cost reporting periods beginning on or after Oct. 1, 1982 and before July 1, 1984]

If a SNF cost reporting period begins—	The adjustment factors is[1]—
July 1, 1983	1.05225
Aug. 1, 1983	1.05808
Sept. 1, 1983	1.06392
Oct. 1, 1983	1.06975
Nov. 1, 1983	1.07558
Dec. 1, 1983	1.08141
Jan. 1, 1984	1.08724
Feb. 1, 1984	1.09307

TABLE A-IV.—COST REPORTING YEAR ADJUSTMENT FACTORS*—Continued

[Cost reporting periods beginning on or after Oct. 1, 1982 and before July 1, 1984]

If a SNF cost reporting period begins—	The adjustment factors is[1]—
Mar. 1, 1984	1.09890
Apr. 1, 1984	1.10473
May 1, 1984	1.11056
June 1, 1984	1.11639

[1] *Based on projected market basket inflation rate of 6.9 percent and 7.0 percent for 1983 and 1984 respectively. These adjustment factors are subject to change based on later estimates of cost increases.

APPENDIX A-I.—DERIVATION OF "MARKET BASKET" INDEX FOR SNF ROUTINE SERVICE COSTS (COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1982 AND BEFORE JULY 1, 1984)

Category of costs	Relative[1] importance 1960	Forecaster[2] percent changes (1980–1984)	Price variable used
Payroll Expenses	61.26	DRI-CFS	Percentage changes in average hourly earnings of employees in nursing and personal care facility. (SIC 805). Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly).
Food	9.71	DRI-MM	Processed foods and feeds component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
		DRI-MM	Food and beverage component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
Employee Benefits	7.92	DRI-MM	Supplements to wages and salaries per worker in nonagricultural establishments. For supplements to wages—Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business*. For total employment—Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly).
Fuel and other utilities	5.26	DRI-MM	A. Implicit price deflator-consumption of fuel oil and coal (derived from fuel oil component of Consumer Price Index). Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, (monthly).
		DRI-MM	B. Implicit price deflator-consumer of electricity (derived from electricity component of Consumer Price Index). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis.
		DRI-MM	C. Implicit price deflator for natural gas (derived from utility (piped) gas component of Consumer Price Index). Source: Same as electricity above.
		DRI-CFS	D. Water and sewage maintenance component of the Consumer Price Index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Miscellaneous	4.97	DRI-MM	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
Other business services	4.87	DRI-MM	Services component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
Supplies	3.40	DRI-MM	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
Drugs	1.40	DRI-CFS	Pharmaceutical preparations, ethical component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Producer Prices and Price Indexes*, (monthly).
Health services	1.21	DRI-CFS	Physician services component of Consumer Price Index for all urban consumers. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.

[1] The basic weights for all major categories of skilled nursing home costs were obtained from the DHEW-National Center for Health Statistics (NCHS) National Nursing Home Surveys (NNHS) for 1972 and 1976 for homes certified for participation in the Medicare program. See *Nursing Home Costs 1972, United States: National Nursing Home Survey, August 1973-April 1974. DHEW, NCHS: National Nursing Home Survey: 1977 Summary for the United States, Vital and Health Statistics, Series 13, Number 43.*

A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. In calendar year 1977 each "price" variable has an index of 100.0 The relative routine service cost weights change each period in accordance with price changes for each price variable. Cost categories with relatively higher "price" increases get relatively higher cost weights and vice versa.

[2] DRI-CFS refers to Data Resources, Inc., Cost Forecasting Service (CFS 823), 1750 K Street, N.W., Washington, D.C. 20006.

[3] DRI-MM refers to Data Resources, Inc., Trendlong (782), 29 Hartwell Avenue, Lexington, Massachusetts 02173.

APPENDIX A-II.—SMSA/NECMA CONSTITUENT COUNTIES

[Cost reporting periods beginning on or after Oct. 1, 1982 and before July 1, 1984]

SMSA area	Constituent counties
Areas No Longer Qualifying as SMSA's	
Rapid City, SD	Meade and Pennington.
Areas Qualifying for Recognition as New SMSA's	
Anderson, SC	Anderson.
Arecibo, PR	Arecibo Municipio, Camuy Municipio, and Hatillo Municipio.
Athens, GA	Clarke, Jackson, Madison, and Oconee.
Bellingham, WA	Whatcom.
Benton Harbor, MI	Berrien.
Bremerton, WA	Kitsap.
Casper, WY	Natrona.
Charlottesville, VA	Albemarle, Fluvanna, Greene, and Charlottesville City.
Chico, CA	Butte.
Cumberland, MD-WV	Allegany (MD) and Mineral (WV).
Danville, VA	Pittsylvania and Danville City.
Florence, SC	Florence.
Fort Walton Beach, FL	Okaloosa.
Glens Falls, NY	Warren and Washington.
Hagerstown, MD	Washington.
Hickory, NC	Alexander and Catawba.
Jacksonville, NC	Onslow.
Joplin, MO	Jasper and Newton.
Medford, OR	Jackson.
Newark, OH	Licking.
Newburgh-Middletown, NY	Orange.
Ocala, FL	Marion.
Olympia, WA	Thurston.
Redding, CA	Shasta.
Rock Hill, SC	York.
Salisbury-Concord, NC	Cabarrus and Rowan.
Sharon, PA	Mercer.
Sheboygan, WI	Sheboygan.
State College, PA	Centre.
Victoria, TX	Victoria.
Visalia-Tulare-Porterville, CA	Tulare.
Wausau, WI	Marathon.
Yuba City, CA	Sutter and Yuba.

NECMA	Constituent counties
New NECMA's	
Bangor, ME	Penobscot.
Burlington, VT	Chittenden.
Portsmouth-Dover-Rochester, NH-ME	Rockingham (NH), Strafford (NH), and York (ME).
Revised NECMA Definitions	
Boston-Lowell-Brockton-Lawrence-Haverhill MA	Essex (MA), Middlesex (MA), Norfolk (MA), Suffolk (MA), and Suffolk (MA), and Plymouth (MA).
Hartford-New Britain-Bristol, CT	Hartford, Middlesex, and Tolland.
Manchester-Nashua, NH	Hillsborough.
Portland, ME	Cumberland and Sagadahoc.
Providence-Warwick-Pawtucket, RI	Bristol, Kent, Providence, and Washington.

TABLE B-I—SNF GROUP LIMITS

[Cost reporting periods beginning on or after July 1, 1984]

Location	Labor-related component	Nonlabor component [1]
Hospital-based:		
MSA:		
Limit	$65.76	$17.12
A&G add-on	2.37	.54
Non-MSA:		
Limit	$61.14	$12.81
A&G add-on	1.77	.41

[1] The nonlabor portion of the limits for SNFs located in the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands will be increased by the following cost-of-living adjustments:

Location	Adjustment factor
Alaska: All locations	1.250
Hawaii:	
Oahu	1.200
Kauai	1.175
Maui and Lanai	1.200
Malokai	1.200
Hawaii (island)	1.100
Puerto Rico	1.100
Virgin Islands:	
St. Croix	1.100
St. Thomas and St. John	1.100

TABLE B-II.—WAGE INDEX FOR URBAN AREAS

[Cost reporting periods beginning on or after July 1, 1984]

Urban area (MSA) (constituent counties or county equivalents)	Wage Index
Abilene, TX	.9830
Taylor, TX	
Aguadilla, PR	.5423
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	1.0648
Portage, OH	
Summit, OH	
Albany, GA	[1].8862
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.9080
Albany, NY	
Green, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0578
Bernalillo, NM	
Alexandria, LA	.9874
Rapides, LA	
Allentown-Bethlehem, PA-NJ	1.0665
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northhampton, PA	
Alton-Branite City, IL	.9856
Jersey, IL	
Madison, IL	
Altoona, PA	1.0804
Blair, PA	
Amarillo, TX	1.0187
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2407
Orange, CA	
Anchorage, AK	1.5915
Anchorage, AK	
Anderson, IN	.9792
Madison, IN	
Anderson, SC	.8605
Anderson, SC	
Ann Arbor, MI	1.1886
Washtenaw, MI	
Anniston, AL	.8623
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	.9852
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	.5717
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	.9551
Buncombe, NC	
Athens, GA	.8660
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	.9489
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0663
Atlantic, NY	
Cape May, NY	
Augusta, GA-SC	.9723
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1.0087
Kane, IL	
Kendall, IL	
Austin, TX	1.0846
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.2157
Kern, CA	
Baltimore, MD	1.0471
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.9458
Penobscot, ME	
Baton Rouge, LA	1.0470
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	1.0115
Calhoun, MI	
Beaumont-Port Arthur, TX	1.0450
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.1827
Beaver, PA	
Bellingham, WA	1.0695
Whatcom, WA	
Benton Harbor, MI	.8586
Berrien, MI	
Bergen-Passaic, NJ	1.0241
Bergen, NJ	
Passaic, NJ	
Billings, MT	[1].9947
Yellowstone, MT	
Biloxi-Gulfport, MS	.8685
Hancock, MS	
Harrison, MS	
Binghamton, NY	.9651
Broome, NY	
Tioga, NY	
Birmingham, AL	.9912
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9875
Burleigh, ND	
Morton, ND	
Bloomington, IN	[1].9327
Monroe, IN	
Bloomington-Normal, IL	.8992
McLean, IL	
Boise City, ID	1.0363
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1213
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	.9896
Boulder, CO	
Bradenton, FL	[1].9656
Manatee, FL	
Brazoria, TX	.8640
Brazoria, TX	
Bremerton, WA	[1].9478
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1476
Fairfield, CT	
Brownsville-Harlingen, TX	.9413
Cameron, TX	
Bryan-College Station, TX	.9517
Brazos, TX	
Buffalo, NY	.9927
Erie, NY	
Burlington, NC	.8756
Alamance, NC	
Burlington, VT	[1].9645
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	.5573
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	.9516

TABLE B-II.—WAGE INDEX FOR URBAN AREAS—Continued

[Cost reporting periods beginning on or after July 1, 1984]

Urban area (MSA) (constituent counties or county equivalents)	Wage Index
Carroll, OH	
Stark, OH	
Casper, WY	[1].9912
Natrona, WY	
Cedar Rapids, IA	.9069
Linn, IA	
Champaign-Urbana-Rantoul, IL	1.0155
Champaign, IL	
Charleston, SC	1.0115
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	1.1484
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	.9587
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	1.0430
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	.9761
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Chicago, IL	1.1823
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0497
Butte, CA	
Cincinnati, OH-KY-IN	1.0576
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.8257
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.2192
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medinla, OH	
Colorado Springs, CO	1.0954
El Paso, CO	
Columbia, MO	1.1152
Boone, MO	
Columbia, SC	.9458
Lexington, SC	
Richland, SC	
Columbus, GA-AL	.8884
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	1.0491
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.9581
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	.8955
Allegany, MD	
Mineral, WV	
Dallas, TX	1.1035
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	[1].8723
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	.9947
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0996
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	1.0005
Volusia, FL	
Decatur, IL	1.0029
Macon, IL	
Denver, CO	1.2022
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	1.0519
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.1644
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.9151
Dale, AL	
Houston, AL	
Dubuque, IA	1.0188
Dubuque, IA	
Duluth, MN-WI	.9171
St. Louis, MN	
Douglas, WI	
East St. Louis-Belleville, IL	.9478
Clinton, IL	
St. Clair, IL	
Eau Claire, WI	.9803
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	.9161
El Paso, TX	
Elkhart-Goshen, IN	[1].9375
Elkhart, IN	
Elmira, NY	1.0159
Chemung, NY	
Enid, OK	.9616
Garfield, OK	
Erie, PA	1.0011
Erie, PA	
Eugene-Springfield, OR	.9821
Lane, OR	
Evansville, IN-KY	1.0333
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0161
Clay, MN	
Cass, ND	
Fayetteville, NC	[1].9505
Cumberland, NC	
Fayetteville-Springdale, AR	.8278
Washington, AR	
Flint, MI	1.2122
Genesee, MI	
Florence, AL	.8296
Colbert, AL	
Lauderdale, AL	
Florence, SC	.8361
Florence, SC	
Fort Collins-Loveland, CO	.9993
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.1292
Broward, FL	
Fort Myers-Cape Coral, FL	.9741
Lee, FL	
Fort Pierce, FL	1.0164
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.9712
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	[1].8181
Okaloosa, FL	
Fort Wayne, IN	.9412
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	1.0064
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1776
Fresno, CA	
Gadsden, AL	.9269
Etowah, AL	
Gainesville, FL	.9645
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.1191
Galveston, TX	
Gary-Hammond, IN	1.1796
Lake, IN	
Porter, IN	
Glens Falls, NY	.9332
Warren, NY	
Washington, NY	
Grand Forks, ND	.9576
Grand Forks, ND	
Grand Rapids, MI	1.0080
Kent, MI	
Ottawa, MI	
Great Falls, MT	[1] 1.0663
Cascade, MT	
Greeley, CO	[1] 1.0470
Weld, CO	
Green Bay, WI	.9762
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.9687
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.9411
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.9601
Washington, MD	
Hamilton-Middletown, OH	1.0288
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	1.0594
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.1320
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.9306
Alexander, NC	
Burke, NC	
Catawaba, NC	
Honolulu, HI	1.1108
Honolulu, HI	
Houma-Thibodaux, LA	.9636
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.1292
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	1.0103
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	

TABLE B-II.—WAGE INDEX FOR URBAN AREAS—Continued

[Cost reporting periods beginning on or after July 1, 1984]

Urban area (MSA) (constituent counties or county equivalents)	Wage Index
Cabell, WV	
Wayne, WV	
Huntsville, AL	.9350
Madison, AL	
Indianapolis, IN	1.0687
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.1197
Johnson, IN	
Jackson, MI	[1] 1.0062
Jackson, MI	
Jackson, MS	.8772
Hinds, MS	
Madison, MS	
Rankin, MS	
Jacksonville, FL	1.0231
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	[1] .8134
Onslow, NC	
Janesville-Beloit, WI	.8798
Rock, WI	
Jersey City, NJ	1.2428
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.9370
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	1.0051
Cambria, PA	
Somerset, PA	
Joliet, IL	1.1063
Grundy, IL	
Will, IL	
Joplin, MO	1.0053
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.2334
Kalamazoo, MI	
Kankakee, IL	1.0123
Kankakee, IL	
Kansas City, MO-KS	.9969
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	[1] 1.1022
Kenosha, WI	
Killeen-Temple, TX	.9567
Bell, TX	
Coryell, TX	
Knoxville, TN	.9109
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	1.0050
Howard, IN	
Tipton, IN	
LaCrosse, WI	[1] .9676
LaCrosse, WI	
Lafayette, LA	1.0019
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.9546
Tippecanoe, IN	

TABLE B-II.—WAGE INDEX FOR URBAN AREAS—Continued

[Cost reporting periods beginning on or after July 1, 1984]

Urban area (MSA) (constituent counties or county equivalents)	Wage Index
Lake Charles, LA	.9512
Calcasieu, LA	
Lake County, IL	1.1075
Lake, IL	
Lakeland-Winter Haven, FL	.9536
Polk, FL	
Lancaster, PA	1.0830
Lancaster, PA	
Lansing-East Lansing, MI	1.0598
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	[1] .8545
Webb, TX	
Las Cruces, NM	[1] .8257
Dona Ana, NM	
Las Vegas, NV	1.2109
Clark, NV	
Lawrence, KS	[1] .9674
Douglas, KS	
Lawton, OK	[1] 1.0050
Comanche, OK	
Lewiston-Aburn, ME	[1] .9601
Androscoggin, ME	
Lexington-Fayette, KY	.9800
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.9773
Allen, OH	
Auglaize, OH	
Lincoln, NE	.8804
Lancaster, NE	
Little Rock-North Little Rock, AR	1.0543
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8902
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	1.0263
Lorain, OH	
Los Angeles-Long Beach, CA	1.3072
Los Angeles, CA	
Louisville, KY-In	1.1145
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	.9919
Lubbock, TX	
Lynchburg, VA	.8911
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	1.0089
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.1276
Dane, WI	
Manchester-Nashua, NH	.9375
Hillsboro, NH	
Merrimack, NH	
Mansfield, OH	.9676
Richland, OH	
Mayaguez, PR	.5841
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	.8181
Hidalgo, TX	
Medford, OR	.9801
Jackson, OR	
Melbourne-Titusville, FL	.9656
Brevard, FL	
Memphis, TN-AR-MS	1.0793
Crittenden, AR	

TABLE B-II.—WAGE INDEX FOR URBAN AREAS—Continued

[Cost reporting periods beginning on or after July 1, 1984]

Urban area (MSA) (constituent counties or county equivalents)	Wage Index
De Soto, MS	
Shelby, TN	
Tipton, TN	
Miami-Hialeah, FL	1.1603
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0305
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.2069
Midland, TX	
Milwaukee, WI	1.0452
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.0398
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.9486
Baldwin, Al	
Mobile, AL	
Modesto, CA	1.1111
Stanislaus, CA	
Monmouth-Ocean, NJ	.9660
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.9392
Ouachita, LA	
Montgomery, AL	.9505
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	[1] .9927
Delaware, IN	
Muskegon, MI	[1] .9288
Muskegon, MI	
Naples, FL	[1] 1.1719
Collier, FL	
Nashville, TN	1.1273
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.2093
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9534
Bristol, MA	
New Haven-West Haven-Waterbury-Meriden, CT	1.0648
New Haven, CT	
New London-Norwich, CT	1.0254
New London, CT	
New Orleans, LA	1.0185
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3162
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1684
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	

TABLE B-II.—WAGE INDEX FOR URBAN AREAS—Continued

[Cost reporting periods beginning on or after July 1, 1984]

Urban area (MSA) (constituent counties or county equivalents)	Wage index
Niagara Falls, NY	.8570
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9802
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Okland, CA	1.2980
Alameda, CA	
Contra Costa, CA	
Ocala, FL	[1].9759
Marion, FL	
Odessa, TX	[1]1.0917
Ector, TX	
Oklahoma City, OK	1.0825
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	[1]1.0703
Thurston, WA	
Omaha, NE-IA	.9759
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	.9986
Orange, NY	
Orlando, FL	.9695
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	[1].8723
Daviess, KY	
Oxnard-Ventura, CA	1.1811
Ventura, CA	
Panama City, FL	[1].8772
Bay, FL	
Parkersburg-Marietta, WV-OH	1.0150
Washington, OH	
Wood, WV	
Pascagoula, MS	[1]1.1644
Jackson, MS	
Pensacola, FL	.8970
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	1.1424
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.1782
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.1139
Maricopa, AZ	
Pine Bluff, AR	[1].8798
Jefferson, AR	
Pittsburgh, PA	1.1525
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0045
Berkshire, MA	
Ponce, PR	.7283
Juana Diaz, PR	
Ponce, PR	
Portland, ME	.9954
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1309
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	.8785
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.1035
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0189
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Statewide, RI	
Washington, RI	
Provo-Orem, UT	.9524
Utah, UT	
Pueblo, CO	1.1390
Pueblo, CO	
Racine, WI	1.0065
Racine, WI	
Raleigh-Durham, NC	1.0517
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Reading, PA	1.0295
Berks, PA	
Redding, CA	1.0430
Shasta, CA	
Reno, NV	1.2813
Washoe, NV	
Richland-Kennewick, WA	.9737
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.9090
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1731
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.9929
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0156
Olmsted, MN	
Rochester, NY	1.0300
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.0486
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2296
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0895
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.8637
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	1.0241
Buchanan, MO	
St. Louis, MO-IL	1.1022
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0322
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2664
Monterey, CA	
Salt Lake City-Ogden, UT	.9629
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.8955
Tom Green, TX	
San Antonio, TX	.9588
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.1868
San Diego, CA	
San Francisco, CA	1.3524
Marin, CA	
San Francisco, CA	
San Mateo CA	
San Jose, CA	1.2980
Santa Clara, CA	
San Juan, PR	.6275
Barceloria, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1226
Santa Barbara, CA	
Santa Cruz, CA	1.2051
Santa Cruz, CA	
Santa Fe, NM	.9676
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.1680
Sonoma, CA	
Sarasota, FL	.9848
Sarasota, FL	
Savannah, GA	.9288
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	1.0067
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.1155
King, WA	
Snohomish, WA	
Sharon, PA	.9947
Mercer, PA	
Sheboygan, WI	.8947
Sheboygan, WI	
Sherman-Denison, TX	[1].9601
Grayson, TX	
Shreveport, LA	1.1130
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	1.0011
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	.9623
Minnehaha, SD	
South Bend-Mishawaka, IN	.9628

TABLE B-II.—WAGE INDEX FOR URBAN AREAS—Continued

[Cost reporting periods beginning on or after July 1, 1984]

Urban area (MSA) (constituent counties or county equivalents)	Wage index
St. Joseph, IN	
Spokane, WA	1.0917
Spokane, WA	
Springfield, IL	1.1302
Menard, IL	
Sangamon, IL	
Springfield, MO	.9330
Christian, MO	
Greene, MO	
Springfield, MA	1.0112
Hampden, MA	
Hampshire, MA	
State College, PA	[1] 1.0687
Centre, PA	
Steubenville-Weirton, OH-WV	.9732
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1719
San Joaquin, CA	
Syracuse, NY	1.4143
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0596
Pierce, WA	
Tallahassee, FL	.9444
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	1.0285
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.8925
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	1.1765
Miller, AR	
Bowie, TX	
Toledo, OH	1.1421
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	1.1245
Shawnee, KS	
Trenton, NJ	1.0581
Mercer, NJ	
Tucson, AZ	1.0081
Pima, AZ	
Tulsa, OK	1.0703
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1.0111
Tuscaloosa, AL	
Tyler, TX	.9983
Smith, TX	
Utica-Rome, NY	.9621
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2866
Napa, CA	
Solano, CA	
Vancouver, WA	[1] 1.0793
Clark, WA	
Victoria, TX	[1] .9056
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9572
Cumberland, NJ	
Visalia-Tulare-Portervillo, CA	1.1022
Tulare, CA	
Waco, TX	.9056
McLennan, TX	
Washington, DC-MD-VA	1.1594
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9245
Black Hawk, IA	
Bremer, IA	
Wausau, WI	[1] .8970
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0286
Palm Beach, FL	
Wheeling, WV-OH	1.0162
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.1699
Butler, KS	
Sedgwick, KS	
Wichita Falls, TX	.8774
Wichita, TX	
Williamsport, PA	.9546
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0844
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.9205
New Hanover, NC	
Worcester-Fitchbrug-Leominster, MA	.9560
Worcester, MA	
Yakima, WA	1.0358
Yakima, WA	
York, PA	1.0062
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.1188
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0962
Sutter, CA	
Yuba, CA	

[1] Approximate value for area.

TABLE B-III.—WAGE INDEX FOR RURAL AREAS

[Cost reporting periods beginning on or after July 1, 1984]

Rural area (non-MSA)	Wage index
Alabama	.7797
Alaska	1.4463
Arizona	.9060
Arkansas	.7788
California	1.0246
Colorado	.8664
Connecticut	1.0091
Delaware	.9196
Florida	.8830
Georgia	.8362
Hawaii	1.1842
Idaho	.8862
Illinois	.8901
Indiana	.8652
Iowa	.8134
Kansas	.8299
Kentucky	.8365
Louisiana	.8545
Maine	.8623
Maryland	.9146
Massachusetts	1.0340
Michigan	.9338
Minnesota	.8565
Mississippi	.8055
Missouri	.8286
Montana	.8813
Nebraska	.7293
Nevada	1.0439
New Hampshire	1.0052
New Jersey	NA
New Mexico	.9639
New York	.8790
North Carolina	.8545
North Dakota	.8350
Ohio	.9327
Oklahoma	.8723
Oregon	.9565
Pennsylvania	1.0363
Puerto Rico	.5754
Rhode Island [1]	[1] .9306
South Carolina	.8083
South Dakota	.7809
Tennessee	.7875
Texas	.8355
Utah	.7836
Vermont	.8805
Virginia	.8546
Virgin Islands	1.0000
Washington	.9511
West Virginia	.9555
Wisconsin	.8470
Wyoming	.9769

[1] Approximate value for area.

TABLE B-IV.—COST REPORTING YEAR ADJUSTMENT FACTORS*

[Cost reporting periods beginning on or after July 1, 1984]

If a SNF cost reporting period begins—	The adjustment factor is [1]—
Aug. 1, 1984	1.00283
Sept. 1, 1984	1.00567
Oct. 1, 1984	1.00850
Nov. 1, 1984	1.01133
Dec. 1, 1984	1.01417
Jan. 1, 1985	1.01700
Feb. 1, 1985	1.02058
Mar. 1, 1985	1.02417
Apr. 1, 1985	1.02775
May 1, 1985	1.03133
June 1, 1985	1.03492
July 1, 1985	1.03850
Aug. 1, 1985	1.04208
Sept. 1, 1985	1.04567

[1] *Based on projected market basket inflation rates of 3.4 percent and 4.3 percent for 1985 and 1986 respectively. These adjustment factors are subject to change based on later estimates of cost increases or decreases.

If, for any reason, we do not publish a new schedule of limits to be effective on October 1, 1985, or do not announce other changes in the current schedule by that date, the current limits would continue in effect, with the adjustment factor increased by .00358 per month, until a new schedule of limits or other provision is issued.

APPENDIX B-I—DERIVATION OF "MARKET BASKET" INDEX FOR SNF ROUTINE SERVICE COSTS (COST REPORTING PERIODS BEGINNING ON OR AFTER JULY 1, 1984)

Category of costs	Relative importance 1985 [1]	Forecaster percent changes (1981–1986)	Price variable use
Payroll Expenses	61.14	DRI-CFS	Percentage changes in average hourly earnings of employees in nursing and personal care facility. (SIC 805). Source: U.S. Dept. of Labor, Bureau of Labor Statistic, *Employment and Earnings* (monthly), Table C-2.
Food	8.44	DRI-MM	Processed foods and feeds component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
		DRI-MM	Food and beverage component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, *Table 22*
Emloyee Benefits	8.89	DRI-MM	Supplements to wages and salaries per worker in nonagricultural establishments. For supplements to wages—Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business*. Table 1.11. For total employment—Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly), Table B-4.
Fuel and other utilities	5.20	DRI-MM	A. Implicit price deflator-consumption of fuel oil and coal (derived from fuel oil component of Consumer Price Index). Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, (monthly), Table 7.11.
		DRI-MM	B. Implicit price deflator-consumer of electricity (derived from electricity component of Consumer Price Index). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis.
		DRI-MM	C. Implicit price deflator for natural gas (derived from utility (piped) gas component of Consumer Price Index). Source: Same as electricity above.
		DRI-CFS	D. Water and sewage maintenance component of the Consumer Price Index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Miscellaneous	4.84	DRI-MM	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Other business services	5.12	DRI-MM	Services component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Supplies	3.32	DRI-MM	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Drugs	1.72	DRI-CFS	Pharmaceutical preparations, ethical component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Producer Prices and Price Indexes*, (monthly), Table 6.
Health services	1.33	DRI-CFS	Physician services component of Consumer Price Index for all urban consumers. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.

[1] The basic weights for all major categories of skilled nursing home costs were obtained from the DHEW-National Center for Health Statistics (NCHS) National Nursing Home Surveys (NNHS) for 1972 and 1976 for homes certified for participation in the Medicare program. See *Nursing Home Costs 1972, United States: National Nursing Home Survey, August 1973-April 1974, DHEW, NCHS: National Nursing Home Survey: 1977 Summary for the United States, Vital and Health Statistics, Series 13, Number 43.*

A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. In calendar year 1977 each "price" variable has an index of 100.0. The relative routine service cost weights change each period in accordance with price changes for each price variable. Cost categories with relatively high "price" increases get relatively higher cost weights and vice versa.

[2] DRI-CFS refers to Data Resources, Inc., Cost Forecasting Service (CFS 851), 1750 K Street, N.W., Washington, D.C. 20006.

[3] DRI-MM refers to Data Resources, Inc., Trendlong (285), 29 Hartwell Avenue, Lexington, Massachusetts 02173.

(Secs. 1102, 1814(b), 1861(v)(1), 1866(a), 1871 and 1888 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: June 17, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: August 21, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-27768 Filed 11-21-85; 8:45 am]

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federal register

Friday
November 22, 1985

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 47 and 52
Federal Acquisition Regulation (FAR); Transportation Clauses; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 47 and 52

Federal Acquisition Regulation (FAR); Transportation Clauses

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision to the Federal Acquisition Regulation (FAR) in section 47.303, Standard delivery terms and contract clauses, and the clauses at subsections 52.247–29, 52.247–31, and 52.247–32 concerning f.o.b. origin language.

Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 21, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 85–43 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The subsections in FAR 47.303–1, F.o.b. origin; 47.303–3, F.o.b. origin, freight allowed; 47.303–4, F.o.b. origin, freight prepaid; and 47.303–5, F.o.b. origin, with differentials, are changed to conform the language with the clause revisions.

The proposed revisions amend the contract clauses at FAR 52.247–29, F.o.b. Origin; 52.247–31, F.o.b. Origin, Freight Allowed, and 52.247–32, F.o.b. Origin, Freight Prepaid, to alleviate inequities in the clauses regarding f.o.b. origin language.

B. Regulatory Flexibility Act

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), this proposed rule is not expected to have a significant economic impact on a substantial number of small entities because the proposed changes do nothing more than alleviate inequities in the clauses regarding f.o.b. origin.

C. Paperwork Reduction Act Information

The Paperwork Reduction Act does not apply because this proposed rule does not propose additional information gathering or maintenance of records.

List of Subjects in 48 CFR Parts 47 and 52

Government Procurement.

Dated: November 18, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 47 and 52 be amended as set forth below.

1. The authority citation for 48 CFR Parts 47 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137, and 42 U.S.C. 2453(c).

PART 47—TRANSPORTATION

2. Section 47.303–1 is amended by revising paragraph (a)(4) to read as follows:

47.303–1 F.o.b. origin.

(a) * * *

(4) Unless otherwise provided in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR Part 1048).

* * * * *

3. Section 47.303–3 is amended by revising paragraph (a)(1)(iv) to read as follows:

47.303–3 F.o.b. origin, freight allowed.

(a) * * *

(1) * * *

(iv) Unless otherwise provided in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR Part 1048); and

* * * * *

4. Section 47.303–4 is amended by revising paragraph (a)(1)(iv) to read as follows:

47.303–4 F.o.b. origin, freight prepaid.

(a) * * *

(1) * * *

(iv) Unless otherwise provided in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR Part 1048); and

* * * * *

5. Section 47.303–5 is amended by revising paragraph (a)(1)(iv) to read as follows:

47.303–5 F.o.b. origin, with differentials.

(a) * * *

(1) * * *

(iv) Unless otherwise provided in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR Part 1048); and

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.247–29 is amended by revising paragraph (a)(4); by removing paragraph (c)(1); by redesignating paragraphs (c)(2) and (c)(3) as (c)(1) and (c)(2); and by removing in the newly designated paragraph (c)(2) the reference "subparagraph (c)(2) above" and inserting in its place the reference "subparagraph (c)(1) above" as follows:

52.247–29 F.o.b. origin.

* * * * *

(a) * * *

(4) Unless otherwise provided in the solicitation, to any Government designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR Part 1048).

* * * * *

7. Section 52.247–31 is amended by revising paragraph (a)(1)(iv); by removing paragraph (c)(1); by redesignating paragraphs (c)(2) and (c)(3) as (c)(1) and (c)(2); and by removing in the newly designated paragraph (c)(2) the reference "subparagraph (c)(2) above" and inserting in its place the reference "subparagraph (c)(1) above" as follows:

52.247–31 F.o.b. origin, freight allowed.

* * * * *

(a) * * *

(1) * * *

(iv) Unless otherwise provided in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR Part 1048); and

* * * * *

8. Section 52.247–32 is amended by revising paragraph (a)(1)(iv); by removing paragraph (c)(1); and by redesignating paragraphs (c)(2) and (c)(3) as (c)(1) and (c)(2); and by removing in the newly designated paragraph (c)(2) the reference "subparagraph (c)(2) above" and inserting in its place the reference "subparagraph (c)(1) above" as follows:

52.247–32 F.o.b. origin, freight prepaid.

* * * * *

(a) * * *

(1) * * *

(iv) Unless otherwise provided in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR Part 1048); and

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[FR Doc. 85–27857 Filed 11–21–85; 8:45 am]

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Federal Register

Friday
November 22, 1985

Part V

Department of Justice

Bureau of Prisons

28 CFR Parts 522, 524, 544, 550 and 570
Control, Custody, Care, Treatment, and Instruction of Inmates; Final Rule and Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 570

Control, Custody, Care, Treatment, and Instruction of Inmates; Escorted Trips for Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing its final rule on escorted trips for inmates. The rule describes the Bureau's policy on providing approved inmates with staff-escorted trips into the community.

EFFECTIVE DATE: December 23, 1985.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 754, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is publishing its final rule on escorted trips. A proposed rule on this subject was published in the **Federal Register** August 17, 1984 (at 49 FR 32995). Interested persons were invited to submit comments on the proposed rule. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes/Comments

1. Section 570.41—The word "otherwise" is deleted from § 570.41(a). The intent of the section is unchanged. Because the final rule authorizes the Warden to approve medical escorted trips, the phrase "except as specified in § 570.43" is deleted from § 570.41 (c) and (d).

2. Section 570.42—For clarity, the phrase "of each day" is added to § 570.42(b)(1). In the same paragraph, the extraneous phrase "all non-government" is deleted since transportation costs for an escorted trip are borne by the inmate.

2. Section 570.43—This section is retitled "Inmates requiring a high degree of control and supervision", to better identify cases requiring Regional Director review, and approval. The example contained in proposed § 570.43 is deleted as it was considered unnecessary. The final rule deletes the requirement that non-emergency medical escorted trips have prior regional approval. Prior approval of the Regional Director is required for a non-medical escorted trip (either emergency or non-emergency) for an inmate who requires a high degree of control and supervision. In making a decision on whether such an escorted trip should be approved, the Regional Director will consider relevant information, such as the inmate's sentence, time in custody, adjustment, as well as the nature of the request.

3. Section 570.44—Public comment suggested that when an inmate is treated at an outside medical facility, "the doctor in charge of his or her case should determine the level of restraint or at least the level of restraint that is medically appropriate under the circumstances". Our internal staff instructions recognize that trips for medical purposes may require the removal of restraints for treatment or examination. To the extent possible, it is expected this will be pre-determined and noted by Bureau staff prior to the trip receiving final approval. When this does not occur, and then escort staff are advised by outside medical staff that the inmate's restraints should be removed, escort staff are expected to contact the institution for a final decision on whether the restraints may be removed. The decision on removal of restraints may not be left entirely with outside medical staff as they may not be familiar with the security requirements for the inmate being treated.

List of Subjects in 28 CFR Part 570

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V is amended by adding a new Subpart D to Part 570.

Dated: October 21, 1985.

Norman A. Carlson,

Director, Bureau of Prisons.

I. In Subchapter D, Part 570 is amended by adding a new Subpart D to read as follows:

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 570—COMMUNITY PROGRAMS

Subpart D—Escorted Trips

Sec.

570.40 Purpose and scope.
570.41 Medical escorted trips.
570.42 Non-medical escorted trips.
570.43 Inmates requiring a high degree of control and supervision.
570.44 Supervision and restraint requirements.
570.45 Violation of escorted trip.

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart D—Escorted Trips

§ 570.40 Purpose and scope.

The Bureau of Prisons provides approved inmates with staff-escorted trips into the community for such purposes as receiving medical treatment not otherwise available, for visiting a critically-ill member of the inmate's immediate family, or for participating in program or work-related functions.

§ 570.41 Medical escorted trips.

(a) Medical escorted trips are intended to provide an inmate with medical treatment not available within the institution. There are two types of medical escorted trips.

(1) *Emergency medical escorted trip.*—An escorted trip occurring as the result of an unexpected life-threatening medical situation requiring immediate medical treatment not available at the institution. The required treatment may be on either an in-patient or out-patient basis.

(2) *Non-emergency medical escorted trip.*—A pre-planned escorted trip for the purpose of providing an inmate with medical treatment ordinarily not available at the institution. The required treatment may be on either an in-patient or out-patient basis.

(b) The Chief Medical Officer or designee is responsible for determining whether a medical escorted trip is appropriate.

(c) *Escorted trip procedures—out-patient medical treatment.* A recommendation for an inmate to receive a medical escorted trip is prepared by medical staff, forwarded through the appropriate staff for screening and clearance, and then submitted to the Warden for review. The Warden may approve an inmate for an out-patient medical escorted trip.

(d) *Escorted trip procedures—in-patient medical treatment.* A recommendation for an inmate to receive a medical escorted trip is

prepared by medical staff, forwarded through the appropriate staff for screening and clearance, and then submitted to the Warden. The Warden may approve an inmate for an in-patient medical escorted trip.

§ 570.42 Non-medical escorted trips.

(a) Non-medical escorted trips allow an inmate to leave the institution under staff escort for approved, non-medical reasons. There are two types of non-medical escorted trips.

(1) *Emergency non-medical escorted trip.*—An escorted trip for such purposes as allowing an inmate to attend the funeral of, or to make a bedside visit to, a member of an inmate's immediate family. For purposes of this rule, immediate family refers to mother, father, brother, sister, spouse, children, step-parents, and foster parents.

(2) *Non-emergency, non-medical escorted trip.*—An escorted trip for such purposes as allowing inmates to participate in program-related functions, such an educational or religious activities, or in work-related functions.

(b) *Escorted trip procedures—emergency non-medical reasons.* Unit staff are to investigate, and determine, the merits of an escorted trip following a review of the available information. This includes contacting those persons (e.g., attending physician, hospital staff, funeral home staff, family members, United States Probation Officer) who can contribute to a determination on whether an escorted trip should be approved.

(1) The government assumes the salary expenses of escort staff for the first eight hours of each day. All other expenses, including transportation costs, are assumed by the inmate, the inmate's family, or other appropriate source approved by the Warden. The necessary funds must be deposited to the inmate's trust fund account prior to the trip. Funds paid by the inmate for purposes of the escorted trip are then drawn, payable to the Treasury of the United States. Unexpended funds are returned to the inmate's trust fund account following the completion of the trip.

(2) A request for an inmate to receive an emergency non-medical escorted trip is prepared by unit staff, forwarded through the appropriate staff for screening and clearance, and then submitted to the Warden. Except as specified in § 570.43, the Warden may approve an inmate for an emergency non-medical escorted trip.

(c) *Escorted trip procedures—non-emergency, non-medical reasons.* This type of escorted trip is considered for an inmate who has been at the institution for at least 90 days, and who is considered eligible for less secure housing and for work details, under minimal supervision, outside the institution's perimeter. A recommendation for an inmate to receive an escorted trip for non-emergency, non-medical reasons is prepared by the recommending staff, forwarded through the appropriate staff for screening and clearance, and then submitted to the Warden. Except as specified in § 570.43, the Warden may approve an inmate for a non-emergency, non-medical escorted trip.

§ 570.43 Inmates requiring a high degree of control and supervision.

Only the Regional Director may approve a non-medical escorted trip (either emergency or non-emergency) for an inmate determined to require a high degree of control and supervision.

§ 570.44 Supervision and restraint requirements.

Inmates under escort will be within the constant and immediate visual supervision of escorting staff *at all times*. Restraints may be applied to an inmate going on an escorted trip, after considering the purpose of the escorted trip and the degree of supervision required by the inmate. Except for escorted trips for a medical emergency, an inmate going on an escorted trip must agree in writing to the conditions of the escorted trip (for example, agrees not to consume alcohol).

§ 570.45 Violation of escorted trip.

(a) Staff shall process as an escapee an inmate who absconds from an escorted trip.

(b) Staff may take disciplinary action against an inmate who fails to comply with any of the conditions of the escorted trip.

[FR Doc. 85-27921 Filed 11-21-85; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 522, 524, 544, and 550

Control, Custody, Care, Treatment, and Instruction of Inmates; Chemical Abuse Programs, Admission and Orientation, Classification and Program Review, and Inmate Recreation Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rules.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its final rules on (1) admission and orientation (A&O); (2) classification and program review; and (3) inmate recreation programs. The proposed rule on admission and orientation programs includes a requirement that institutions have both a centralized A&O program and a unit familiarization program. The proposed rule on classification and program review requires that the inmate attend the initial classification meeting. The proposed rule on recreation programs includes a revised section on the showing of movies at the institution. The Bureau is also proposing a new rule on chemical abuse programs. The rule is intended to provide an inmate who is identified as having a history of chemical abuse with the opportunity to participate in a chemical abuse program.

DATE: Comments on these rules must be received on or before January 10, 1986.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a), and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** proposed amendments to its rules on (1) admission and orientation; (2) classification and program review; and (3) inmate recreation programs. Because of various non-substantive changes, and to allow for a fuller review, the Bureau is publishing each amended rule in its entirety. In addition, the Bureau is publishing a new proposed rule on chemical abuse programs.

Proposed Amendments to the Rule on the Admission and Orientation Program

A final rule on the admission and orientation program was published in the **Federal Register** December 4, 1981 (at 46 FR 59507 et seq.). The present amendments modify the existing rule. In § 522.40, the first paragraph is revised to specifically reference the institution's centralized admission and orientation program. Proposed paragraph (b) is new and requires that each team or unit in the institution establish a procedure for providing a unit familiarization program to newly assigned inmates. The rule authorizes the unit program to be substituted for the centralized program when necessary to accommodate security needs. Based on new paragraph (b), existing § 522.40 (b) and (c) are reworded and become new § 522.40 (c) and (d). Based on the addition of a unit familiarization program, the title of Part 522, Subpart E becomes "Admission and Orientation/Unit Familiarization Program".

Section 522.41 is retitled "Responsibility for the centralized admission and orientation program". In paragraph (a), the word "centralized" is added to identify the responsibility of the staff coordinator. Paragraphs (b) and (c) are reworded, although their basic intent is unchanged.

Section 522.42 is retitled "Guidelines for the centralized admission and orientation program". Paragraphs (a) and (b) are reworded, although their intent is unchanged. Paragraph (c) is deleted. Its intent is now encompassed within former paragraph (d), now proposed paragraph (c), entitled "A&O activities". New paragraph (c) is intended to ensure that the newly committed inmate receives a full spectrum of activities while in A&O. Final paragraphs (e)–(g), now proposed paragraphs (d)–(f), are reworded, although their intent is unchanged. Section 522.43, "Responsibility for the unit familiarization program", is new. This section identifies Bureau staff responsible for the unit familiarization program.

Proposed Amendments to the Rule on Classification and Program Review

A final rule on classification and program review of inmates was published in the **Federal Register** May 1, 1981 (at 46 FR 24899). An amendment to this rule was published in the **Federal Register** January 3, 1984 (at 49 FR 193). The present amendments are intended to address concerns that have arisen since the rule was last amended.

In § 524.11, the introductory paragraph is revised to indicate that the section refers to both the classification and program review process. Paragraph (a) is revised to identify committee composition. Because institutions ordinarily have unit management, the last sentence of § 524.11(a) is deleted. In paragraph (b), the phrase "one week" is substituted for "five working days".

In § 524.12, paragraph (b) is revised. The revised rule requires the inmate's waiver to be documented in the inmate's central file. The revised rule also requires the inmate to attend the initial classification meeting. This is necessary to ensure that the newly committed inmate is fully aware of what is expected, and has an opportunity to comment on his classification program. In paragraph (c), the phrase "upon completion of the inmate's initial classification" replaces "at the inmate's initial classification". The remainder of this paragraph (c), and paragraph (d) are revised, although their basic intent are unchanged. Paragraph (e) is revised by substituting "14 days" for "5 working days". Although the time frame is expanded, the inmate will have been verbally advised of the program plan at the time of initial classification. In § 524.13, paragraph (a)(2) (i) and (ii) are now included within a new proposed paragraph (i), "the inmate's projected release date". Existing paragraphs (iii) and (iv) will become new paragraphs (ii) and (iii). Paragraph (c) is revised to specifically require that staff offer the inmate an opportunity to make a written statement and/or to submit materials at the program review. Paragraph (c)(2) is revised to refer to new proposed paragraph (c)(3) which states that staff may require an inmate to attend the program review if staff determine that the inmate's appearance at the review is essential. Proposed paragraph (c)(4), pertaining to program reviews for inmates in administrative detention, is new.

Proposed Amendments to the Rule on Inmate Recreation Programs

A final rule on inmate recreation programs was published in the **Federal Register** May 20, 1980 (at 45 FR 33939). The present amendments are intended to address concerns that have arisen since publication of the final rule.

The first sentence of § 544.30 is reworded, although its intent is unchanged. The last sentence of § 544.30 is deleted, as the rule is intended to apply at all Bureau institutions. Section 544.31(a) is expanded. Section 544.31(b) is reworded, although its intent is unchanged. Paragraph (c) deletes the reference to printers or India ink. In § 544.32, final paragraph (a) and (a)(1)

are now combined into a proposed introductory paragraph. Final paragraphs (a)(2) and (a)(3) are now reworded and become proposed paragraphs (a) and (b). Deleted are final § 544.32(a)(4)-(6), as these are included within other sections of the rule, particularly proposed § 544.31(a).

Final § 544.34 is revised and now becomes proposed § 544.33. The proposed rule authorizes the Warden or designee to approve the showing of movies at the institution. Institutions with HBO or cable will ordinarily be allowed to show rental movies only during holidays and special events. X-rated movies may not be shown. The final rule deletes the reference to a committee being appointed to select and review suggested films. As revised, there is no requirement that a screening committee be appointed.

Final § 544.33 now becomes proposed § 544.34. Paragraph (b) substitutes the word "register" for "registration". Paragraph (c)(2) now states that the inmate pays the mailing cost. Paragraphs (c)(3) through (c)(4) are reworded, although their intent is unchanged. The introductory paragraph of § 544.34(d) is new and sets forth the purpose of art and hobbycraft programs. The proposed rule specifically states that such programs are not designed for mass production of art and hobbycraft items or to provide a means of income to an inmate. Paragraph (d)(5) recognizes that a completed hobbycraft article may be given to an authorized visitor. Paragraph (d)(6) is new and recognizes the Warden's authority to set limits on the length of time an inmate may use a hobbycraft facility.

New Rule on Chemical Abuse Programs

The Bureau of Prisons is publishing a new proposed rule on chemical abuse programs. The rule is intended to offer an inmate with a history of chemical abuse the opportunity to participate in a chemical abuse program.

The Bureau of Prisons has determined that these rules are not major rules for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to these rules since the rules involve agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that these rules, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), do not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 770, 320 1st Street NW., Washington, D.C. 20534. Comments received will be considered before final action is taken. The proposed rules may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects

28 CFR Parts 522, 524, and 550

Prisoners.

28 CFR Part 544

Education, Libraries, Prisoners, Recreation.

In consideration of the foregoing, it is proposed to amend Subchapters B and C of 28 CFR, Chapter V as follows:

I. In Subchapter B, revise Part 522, Subpart E;

II. In Subchapter B, revise Part 524, Subpart B;

III. In Subchapter C, revise Part 544, Subpart D; and

IV. In Subchapter C, add a new Subpart F to Part 550.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 522—ADMISSION TO INSTITUTION

Part 522, Subpart E is revised to read as follows:

Subpart E—Admission and Orientation/Unit Familiarization Program

Sec.

522.40 Purpose and scope.
522.41 Responsibility for the centralized admission and orientation program.
522.42 Guidelines for the centralized admission and orientation program.
522.43 Responsibility for the unit familiarization program.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509; 510; 28 CFR 0.95-0.99

Subpart E—Admission and Orientation/Unit Familiarization Program

§ 522.40 Purpose and scope.

(a) Each inmate committed or transferred to a Bureau of Prisons institution shall become involved in that institution's centralized Admission and Orientation (A&O) Program. The Warden shall ensure that staff who are involved with this program offer each newly committed inmate an orientation to the institution, including information regarding institution requirements. Consistent with the security needs of the facility, inmates are to be allowed to visit various areas of the institution. The centralized Admission and Orientation Program shall provide information to inmates on:

(1) Inmate rights and responsibilities;

(2) Institution program opportunities; and

(3) The institution disciplinary system.

(b) Each team or unit within the institution shall establish a procedure for conducting "unit" familiarization for newly assigned inmates to the team or unit. This procedure shall provide inmates with information regarding team and/or unit expectations, activities, and operations. A unit familiarization program may be substituted for the institution A&O program when necessary to accommodate the security needs of special management inmates.

(c) Staff shall develop orientation materials (e.g., handouts and pamphlets) to supplement lectures and discussions.

(d) Pre-trial inmates and those who are in holdover status (en route to a different institution) are excluded from the provisions of this rule.

§ 522.41 Responsibility for the centralized admission and orientation program.

(a) The Warden shall assign the responsibility for coordinating the centralized Admission and Orientation Program to a specific member.

(b) Staff who are involved in the lecture portion of the A&O Program shall develop an outline of the information they wish to include in their presentation.

(c) Staff involved in the A&O Program shall notify the A&O Staff Coordinator of inmates who are experiencing unusual emotional stress so that the inmate can be offered appropriate assistance.

§ 522.42 Guidelines for the centralized admission and orientation program.

(a) *Location.* Each Warden shall determine the most appropriate location for the centralized A&O Program.

(b) *Quarters.* Each Warden shall establish procedures whereby A&O inmates are assigned specific living quarters.

(c) *A&O Activities.* The A&O Staff Coordinator shall ensure that the Admission and Orientation Program provides a full spectrum of activities for the newly committed inmate, including work, education, and recreation.

(d) *Telephone Calls.* Newly committed inmates shall ordinarily be permitted to complete at least two local or collect long distance telephone calls during the admission process.

(e) *Length of A&O Program.* An inmate's involvement in the institution A&O Program is based upon the time that is necessary to accomplish program objectives.

(f) *Documentation.* Staff shall prepare documentation that the inmate has received a copy of the institution inmate

handbook and has completed the institution A&O Program. Staff shall have the inmate sign and date a copy of this document, and the original shall be placed in the inmate's central file.

§ 522.43 Responsibility for the unit familiarization program.

(a) Unit managers and case management personnel are responsible for developing a team or unit familiarization process for inmates who are assigned to their respective caseloads.

(b) Staff shall prepare documentation that the inmate has completed the unit familiarization program. Staff shall have the inmate sign and date a copy of this document, and a copy shall be placed in the inmate's central file.

PART 524—CLASSIFICATION OF INMATES

In Part 524, Subpart B is revised to read as follows:

Subpart B—Classification and Program Review of Inmates

Sec.

524.10 Purpose and scope.
524.11 Classification team.
524.12 Initial classification.
524.13 Program reviews.
524.14 Effect of a detainer on an inmate's program.
524.15 Unscheduled reviews.
524.16 Appeals procedure.
524.17 Study and observation cases.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509; 510; 28 CFR 0.95–0.99

Subpart B—Classification and Program Review of Inmates

§ 524.10 Purpose and scope.

It is the policy of the Federal Bureau of Prisons to classify each newly committed inmate within four weeks of the inmate's arrival at the institution designated for service of sentence. Subsequent program reviews for each inmate shall be conducted at regular intervals. The Warden shall establish procedures to ensure that a newly committed inmate is promptly assigned to a classification team.

§ 524.11 Classification team.

The Warden shall ensure that each department within the institution has the opportunity to contribute to the inmate classification and program review process.

(a) At a minimum, each classification (unit) team shall inlcude the unit manager or case management specialist, a case manager, and a correctional counselor. An education advisor and a psychology services representative are ordinarily members of the classification team as well.

(b) Each member of the classification team shall individually interview the newly arrived inmate within one week of the inmate's assignment to that team.

§ 524.12 Initial classification.

(a) The Warden or designee shall ensure that each newly committed inmate is scheduled for initial classification within four weeks of the inmate's arrival at the designated institution.

(b) Staff shall notify an inmate at least 48 hours prior to the inmate's scheduled appearance before the classification team. An inmate may waive in writing the 48 hours notice requirement. An inmate's waiver of the 48 hour requirement is to be documented in the inmate's central file. The inmate is required to be present at the initial classification meeting.

(c) Staff shall complete a Program Review Report upon completion of the inmate's initial classification. This report shall offer a correctional program (plan) designed to meet the inmate's needs. Each sentenced inmate who is physically and mentally able shall be assigned to an institutional or industrial work program. With the exception of the work assignment, or where program involvement is mandated by Bureau policy, e.g., Adult Basic Education (ABE) or by statute, the inmate may choose not to participate in the recommended program.

(d) The inmate is to be provided, and sign for a copy of the program review report. If the inmate refuses to sign for a copy, staff witnessing the refusal shall place a signed statement to this effect on the report. A copy of the report will be placed in the inmate's central file.

(e) Within 14 days following the initial classification meeting, staff shall prepare a staff summary, discussing those facts which were available at the time of the initial classification. The staff summary is to include information on the inmate's current offense and prior record, social situation, recommended programs, and community resources. A copy of the staff summary is provided to the inmate, upon the inmate's request. A staff summary is not required for an inmate serving a sentence of six months or less.

§ 524.13 Program reviews.

(a) Staff shall conduct a program review for each inmate in:

(1) Security Level 1, 2, and 3 institutions at least once every 90 days, and

(2) Security Level 4, 5, and 6 and administrative institutions at least once every 180 days. When an inmate in a Security Level 4, 5, 6, or administrative institution is within two years of an anticipated release date, a program review shall be conducted at least once every 90 days. An anticipated release date, for purpose of this rule, refers to the first of the following dates:

(i) The inmate's projected release date;

(ii) The inmate's presumptive parole date; or

(iii) The inmate's effective parole date.

(b) Staff shall prepare a program review report to document each program review. The inmate is to sign for and receive a copy of this report. If the inmate refuses to sign for a copy of this report, staff witnessing the refusal shall place a signed statement to this effect on the report. Staff shall place a copy of the program review in the inmate's central file.

(c) Staff shall notify the inmate of the program review at least 48 hours in advance of the staff originated meeting and offer the inmate an opportunity to make a written statement and/or to submit materials at the program review.

(1) An inmate may waive in writing the 48 hours notice requirement.

(2) Except as noted in paragraph (c)(3) of this section, an inmate may elect not to attend the program review. An inmate who elects not to attend this review ordinarily must indicate this refusal, through a signed statement on the program review report at least 24 hours prior to the scheduled meeting. When an inmate does not provide this signed statement, but elects not to attend the program review, staff shall indicate the inmate's refusal to appear and, if known, the reasons for refusal on the program review report. A copy of this report is to be forwarded to the inmate. The inmate who elects not to appear for a program review is responsible for becoming aware of, and will be held accountable for, the classification team's action.

(3) An inmate may be required to attend the classification meeting when staff determine, and advise the inmate in writing, that the inmate's appearance is essential.

(4) An inmate confined in administrative detention shall receive regularly scheduled program review on the record. This procedure shall be documented and a copy of the report sent to the inmate. Upon the inmate's release from detention status, the inmate may be considered for an unscheduled review as provided for in § 524.15 of this rule.

§ 524.14 Effect of a detainer on an inmate's program.

The existence of detainer, by itself, ordinarily does not affect the inmate's program. An exception may occur where the program is contingent on a specific issue (for example, custody) which is affected by the detainer.

§ 524.15 Unscheduled reviews.

Staff may establish a schedule to ensure that inmates are provided program reviews as required by this rule. Upon request of the inmate or staff, and with the concurrence of the unit manager, an advanced or previously unscheduled program review may occur.

§ 524.16 Appeals procedure.

An inmate may appeal, through the Administrative Remedy Procedure, a decision made at the initial classification or at a program review.

§ 524.17 Study and observation cases.

Inmates committed to the custody of the U.S. Attorney General for purposes of study and observation are excluded from the provisions of this rule.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

Part 544, Subpart D is revised to read as follows:

Subpart D—Inmate Recreation Programs

Sec.
544.30 Purpose and scope.
544.31 Definitions.
544.32 Goals.
544.33 Movies.
544.34 Art and hobbycraft.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart D—Inmate Recreation Programs

§ 544.30 Purpose and scope.

The Bureau of Prisons encourages an inmate to make constructive use of leisure time and offers movies, sports, social activities, arts and hobbycrafts.

§ 544.31 Definitions.

(a) *Leisure activities* are a wide range of activities in which inmates may participate when not performing assigned duties. Leisure activities include organized and informal sports, table games, hobbycrafts, music programs, intramural activities, social and cultural organizations, movies and stage shows. Religious activities, psychological services, and education classes are not included within this definition.

(b) *Organized activities* are those activities accounted for by registration or roster of individual participants.

(c) *Art work* includes all paintings and sketches rendered in any of the usual media (oils, pastels, crayons, pencils, inks, and charcoal).

(d) *Hobbycraft activities* includes leatherwork, models, clay, mosaics, crochet, knitting, sculptures, woodworking, lapidary, and other forms consistent with institution guidelines.

§ 544.32 Goals.

The Warden is to ensure, to the extent possible, that leisure activities are provided to meet the social, physical, and psychological needs of inmates.

(a) Leisure activities are designed to attract inmate participation regardless of ethnic, racial, age, and sex differences, and to enhance potential for post-release involvement.

(b) Leisure activities are designed to ensure that an inmate with the need, capacity, and desire has the opportunity to complete one or more leisure activities (see 28 CFR 544.81).

§ 544.33 Movies.

The Warden or designee may approve the showing of movies at the institution. Institutions with HBO or cable ordinarily may show rental movies only during holidays and special events. X-rated movies may not be shown at the institution.

§ 544.34 Art and hobbycraft.

(a) An inmate engaged in art or hobbycraft activities may obtain materials through:

(1) The institution art program (if one exists);

(2) The commissary sales unit;

(3) Special purchase commissary orders, if the sales unit is unable to stock a sufficient amount of the needed materials; or

(4) Other sources approved by the Warden.

(b) Each inmate shall identify art or hobbycraft materials by showing the inmate's name and register number on the reverse side of the item.

(c) Completed or abandoned art or hobbycraft articles may be disposed of in the following manner:

(1) Upon approval of the Warden, by giving the item to an authorized visitor;

(2) By mailing the items to a verified relative or approved visitor at the inmate's expense.

(3) Items may be sold through an institution art and hobbycraft sales program, if one exists, after the institution price committee has determined the sale price.

(4) Other methods established by the Warden.

(d) *Restrictions.* Art and hobbycraft programs are intended for the personal enjoyment of the inmate and as an opportunity to learn a new leisure skill. They are not for the mass production of art and hobbycraft items by artists or to provide a means of supplementing institution income.

(1) The Warden may restrict for reasons of security and housekeeping, the size of inmate paintings. Paintings mailed out of the institution must conform to both institution guidelines and postal regulations. If an inmate's art work or hobbycraft is on public display, the Warden may restrict the content of the work in accordance with community standards of decency.

(2) The Warden may set limits, in compliance with commissary guidelines, on the amount of money an inmate may spend on art or hobbycraft materials.

(3) The Warden may restrict for reasons of security, fire safety, and housekeeping, the use or possession of art and hobbycraft items or materials.

(4) The Warden may limit hobbycraft projects in the cell/living areas to those which can be contained/stored in designated personal property containers. Exceptions may be made for such items as a painting where the size would prohibit placement in a locker. Hobbycraft items must be removed from the living area when completed.

(5) The Warden shall require the inmate to mail completed hobbycraft articles out of the institution at the inmate's expense, or to give them to an authorized visitor within 90 days of completion, or to dispose of them through approved sales. However, articles offered for sale must be sold within 90 days of completion, or must be given to an authorized visitor or mailed out of the institution at the inmate's expense.

(6) Where space and equipment are limited and demand is high, the Warden may set limits on the amount of time an inmate may use a hobbycraft facility, e.g. the Warden may limit an inmate's use of a ceramics classroom to six months to make room for new students.

PART 550—DRUG PROGRAMS

In Subchapter C, add a new Subpart F to Part 550 to read as follows:

Subpart F—Chemical Abuse Programs

Sec.
550.50 Purpose and scope.
550.51 Chemical abuse program standards.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart F—Chemical Abuse Programs

§ 550.50 Purpose and scope.

The Bureau of Prisons offers inmates with histories of chemical abuse the opportunity to participate in chemical abuse programs.

§ 550.51 Chemical abuse program standards.

(a) Each Warden shall designate a Chemical Abuse Program Coordinator.

(b) The Chemical Abuse Program Coordinator shall ensure that all new institution admissions are screened by a psychologist to assess the need for chemical abuse programming. Priority for program involvement shall be given to those inmates with serious chemical abuse problems, and to inmates with court-ordered program involvement.

(c) A standard chemical abuse education package shall be presented to inmates as part of the institution's Admission and Orientation program.

(d) A contractual agreement shall be developed between the inmate participant and chemical abuse staff. This contract shall state the responsibilities of both the program staff and the inmate.

Dated: November 18, 1985.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 85-27920 Filed 11-21-85; 8:45 am]

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federal register

Friday
November 22, 1985

Part VI

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth four actions taken by the Director, NIH, under the November 1984 NIH Guidelines for Research Involving Recombinant DNA Molecules (49 FR 46266).

EFFECTIVE DATE: November 22, 1985.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6051.

SUPPLEMENTARY INFORMATION: Today four actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. Three of the proposed actions were published for comment in the **Federal Register** of August 19, 1985 (50 FR 33462), and reviewed and recommended for approval by the Recombinant DNA Advisory Committee (RAC) at its meeting on September 23, 1985. The fourth action was published in the **Federal Register** of March 28, 1985 (50 FR 12456). It was considered and tabled at the May 3, 1985, RAC meeting; it was rereviewed and recommended for approval at the September 25, 1985, RAC meeting.

In accordance with Section IV-C-1-b of the NIH Guidelines, these actions have been found to comply with the NIH Guidelines and to present no significant risk to health or the environment.

Part I of this announcement provides background information on the actions. Part II provides a summary of the actions of the Director, NIH.

I. Decision on Actions Under NIH Guidelines

A. Request for Permission to Clone Shiga-Like Toxin From the Families Enterobacteriaceae and Vibrionaceae in E. coli K-12

Dr. Alison O'Brien of the Uniformed Services University of the Health Sciences (USUHS) had previously (49 FR 36052) received permission from the National Institutes of Health to clone the structural gene of the Shiga-like toxin (SLT) of *Escherichia coli* in *E. coli K-12*.

Subsequently in a letter of July 26, Dr. O'Brien requested permission to clone SLT structural genes, defined either by nucleotide sequence homology with SLT gene probes from *E. coli* or by antigenic cross-reactivity of their gene products with purified *E. coli* SLT, from bacterial species classified in the families *Enterobacteriaceae* or *Vibrionaceae* into *E. coli* K-12 under conditions similar to those specified in the previous permission. Dr. O'Brien requested premission to broaden the scope of study of SLT toxin for the following reasons: (1) To investigate the potential role of SLT in the pathogenicity of a variety of bacteria; (2) to compare the SLT genes from various pathogenic bacteria; and (3) to facilitate the development of an experimental *Vibrio cholerae* vaccine strain deleted for SLT genes.

This proposal was published in the August 19, 1985, **Federal Register** for public comment. No cumments were received during the comment period.

On August 16, 1985, the RAC Working Group on Toxins considered this proposal. A portion of the minutes of the meeting pertaining to this proposal reads as follows:

"Dr. Gottesman said Dr. Alison O'Brien of the Uniformed Services University of the Health Sciences (USUHS) was requesting permission to clone SLT structural genes (defined either by nucleotide sequence homology with SLT gene probes from *E. coli* or by antigenic cross-reactivity of their gene products with purified *E. coli* SLT) from bacterial species classified in the families *Enterobacteriaceae* or *Vibrionaceae* according to Bergey's Manual of Systematic Bacteriology into *E. coli* K-12 under the conditions specified in **Federal Register**, Volume 49, Number 179. Dr. O'Brien had previously sought and had obtained permission from the NIH to clone SLT from *E. coli* in *E. coli* K-12 host-vector systems. The language of that permission appeared in **Federal Register** 49, Number 179, and was incorporated into the NIH Guidelines as Appendix F-IV-H.

"Dr. Gottesman said Appendix F-IV-H of the NIH Guidelines currently reads:

'The intact structural gene(s) of the Shiga-like toxin from *E. coli* may be cloned in *E. coli* K-12 under BL3+EK1 containment conditions.

'*E. coli* host vector systems expressing the Shiga-like toxin gene may be moved from BL3 to BL2 containment conditions provided that: (1) The amount of toxin produced by the modified host-vector systems is no greater than that produced by the positive control strain 933 *E. coli* 0157:H7, grown and measured under optimal conditions; and (2) the cloning vehicle is to be an EK1 vector preferably belonging to the class of poorly mobilizable plasmids such as pBR322, pBR328, and pBR325.

'Nontoxinogenic fragments of the Shiga-like toxin structural gene(s) may be moved from BL3+EK1 to BL2+EK1 containment conditions or such nontoxinogenic fragments may be directly cloned in *E. coli* K-12 under BL2+EK1 conditions provided that the *E. coli* host-vector systems containing the fragments do not contain overlapping fragments which together would encompass the Shiga-like toxin structural gene(s).' "

". . . . Dr. O'Brien said she and her group had been investigating organisms for the presence of SLT. SLT is defined as being cytotoxic to cells and antigenically cross-reactive with purified *E. coli* SLT. SLT has been identified in members of the families *Enterobacteriaceae* and the *Vibrionaceae*, and she was now requesting permission to clone SLT genes from the *Vibrionaceae* and the *Enterobacteriaceae* in *E. coli* K-12. The major goal of this work is to develop a cholera toxin vaccine.

"Dr. O'Brien suggested SLT may be a common property of these bacteria; in organisms such as *Shigella dysenteriae* 1, SLT may play a role in virulence when a large amount of the protein is produced and other virulence factors are present.

"Dr. O'Brien said SLT has also been recently identified in one strain of *Campylobacter* and two strains of *Aeromonas*. The *Aeromonas* are classified as *Vibrionaceae*. The *Campylobacter* had at one time been classified by Bergey's Manual as *Vibrionaceae* but had recently been reclassified as an orphan species.

"Dr. O'Brien pointed out that a number of *Campylobacter* characteristics are common to the *Vibrionaceae*. She asked whether she might receive permission to clone SLT genes from *Campylobacter*.

"Dr. Milewski said the August 19, 1985, **Federal Register** announcement (50 FR 33462) published 30 days before the RAC meeting and describing the proposal stated that Dr. O'Brien requested permission to clone the SLT gene from members of the families *Enterbacteriaceae* and *Vibrionaceae* . . . She suggested the working group first vote on the proposal as it appeared in the **Federal Register**. The group could subsequently offer a recommendation on experiments involving *Campylobacter*.

"Dr. Levine pointed out that investigation in other parts of the world may perform the types of experiments

requested by Dr. O'Brien under much less restrictive conditions. He though U.S. investigators are unfairly shackled by differences in rules on the cloning of toxin genes.

"Dr. Gottesman said there are two approaches to dealing with differences in rules between countries: (1) The working group may suggest the NIH Guidelines be modified; and (2) the investigator may request more generic approvals.

"Dr. Gottesman suggested the working group proceed by voting on those portions of request which were published in the August 19, 1985, **Federal Register** and subsequently propose and vote on other actions the working group deems reasonable.

"Dr. Gottesman asked whether the SLT structural gene is carried on a phage. Dr. O'Brien replied that high toxin production in bacteria usually appears to be associated with the presence of SLT converting phages such as 933J and H19A/J but not always. A low level of toxin production can consistently be detected in the absence of phage, and may be associated with a chromosomal gene. Dr. O'Brien hypothesized that the phage gene may be a variant of the chromosomal gene. She suggested other variants of the gene might be found in other bacterial species. She added that the Shiga toxin gene appears to be a chromosomal gene in *Shigella dysenteriae* 1 since the phage cannot be induced.

"Dr. Gottesman asked what is known about the host range of the SLT converting phages. Dr. John Newland of USUHS said the phages can infect other *E. coli* strains; other bacterial families have not been studied to determine whether these phages will infect members of these families.

"Dr. Gottesman asked how much toxin was produced when the SLT gene under its own regulation on a multicopy plasmid was introduced into the *E. coli* host-vector system. Dr. O'Brien replied that a seven fold increase in toxin production compared to the standard strain 933 *E. coli* 0157:H7 occurs when the SLT gene under its own regulation is introduced into the *E. coli* host-vector system.

"Dr. O'Brien said the issue of increased SLT production by the *E. coli* host-vector system should be kept in perspective. Under optimal laboratory conditions, *Shigella dysenteriae* 1 strain 60R produces 10^8 cytotoxic toxin doses per milligram (mg) protein . . .; the standard strain 933 *E. coli* 0157:H7 produces 10^7 cytotoxic doses (CDs) per mg protein under optimal conditions. The *E. coli* host-vector strain carrying the SLT gene on a multicopy plasmid produces 7×10^7 CDs per mg protein under optimal conditions. This level of toxin production is still less than that produced by the *Shigella dysenteriae* 1 strain. She added that *Shigella flexneri* produces approximately 10^4 CDs per mg protein under optimal conditions. The *Vibrio cholerae* vaccine strain produces 10^4 CDs per mg protein under optimal conditions.

"Dr. Collier pointed out that at this time the specific activity of SLT toxin is not known. Dr. Gottesman said arguments on mechanism of entry into the animal and treatability of symptoms support a recommendation to RAC that this proposal be recommended to the NIH Director. Dr. Formal said *E. coli* host-vector systems offer an additional safety factor since experience has shown *E. coli* K-12 will not ordinarily colonize the bowel.

"Dr. Collier moved that the working group approve of Dr. O'Brien's request as it appears in the August 19, 1985, **Federal Register.**

"Dr. Gill said he would like the record to show the working group was taking this action because it judged that *E. coli* host-vector systems carrying the SLT gene no more harmful than Shiga toxin expressing strains found in nature.

"By a vote of six in favor, none opposed, and no abstentions, the working group recommended RAC approve Dr. O'Brien's request as it appeared in the August 19, 1985, **Federal Register.** . . .

"Dr. Newland asked whether 933 *E. coli* 0157:H7 would be the standard against which activity is measured regardless of what strain was used as the source of the SLT gene. Dr. Gill said the strain specified in Appendix F-IV-H of the NIH Guidelines would be standard strain regardless of the source of the SLT gene.

"Dr. O'Brien asked the working group to consider substituting in Appendix F-IV-H a shigella strain which produces more toxin than 933 *E. coli* 0157:H7 as the standard against which to measure toxin production. *Shigella dysenteriae* 1 strains produce approximately 10^8 CDs mg protein in cell lysate; standard strain 933 *E. coli* 0157: H7 produces 10^7 CDs per mg protein under optimal conditions.

"Dr. Collier said the question is whether there is any reason to believe an *E. coli* K-12 host-vector strain expressing SLT or Shiga toxin on a high copy number plasmid would be any more toxic than *Shigella* found in nature. Dr. Levine pointed out that *E. coli* K-12 does not colonize the gut and a K-12 host-vector system carrying the SLT gene would not be more pathogenic than *Shigella dysenteriae*. He thought 10^8 CDs per mg protein in cell lysates would be an appropriate upper limit for permitting a clone to be removed from BL3 containment.

"Dr. Gill said an extra margin of safety is provided by the specification in Appendix F-IV-H of 10^7 CDs per mg protein in cell lysates as the upper limit for removal of SLT clones from BL3 containment.

He would prefer strain 933 *E. coli* 0157:H7 which produces 10^7 CDs under optimal containment be the standard strain for determining whether a particular host-vector strain could be removed from BL3 containment. If cloning of the Shiga toxin gene on a high copy number plasmid in *E. coli* K-12 resulted in a 10 fold increase in toxin production, a very high level of toxin, 10^9 CDs, would be produced.

"Dr. Kopecko said it was important to clone the Shiga gene from *Shigella dysenteriae* 1 in order to understand how toxin gene expression is controlled since *Shigella dysenteriae* 1, an epidemic strain, produces more toxin than other bacteria. He thought 10^8 CDs per mg protein is equivalent to the highest level of Shiga toxin expression found in nature; therefore, the working group should recommend *E. coli* K-12 host-vector systems expressing 10^8 CDs per mg protein be permitted to be moved from BL3 to lower containment. K-12 strains producing more than 10^8 CDs per mg protein will not be permitted to leave BL3 containment under the proposed language.

"Dr. Gottesman said the issue is whether *E. coli* K-12 producing high levels of Shiga toxin would be hazardous to animals.

"Dr. Habig said he did not see why *E. coli* K-12 host-vector systems carrying the Shiga toxin gene would pose a greater danger than *Shigella dysenteriae* 1. Dr. Kopecko pointed out that clinical laboratories routinely work with *Shigella dysenteriae* 1 at BL2 conditions. He did not think *E. coli* K-12 host-vector systems would be more dangerous than *Shigella dysenteriae* 1. Dr. Gottesman said she felt comfortable with permitting *E. coli* host-vector systems expressing 10^8 CDs of SLT to be used at BL2 containment since *E. coli* K-12 does not colonize the gut.

"Dr. Levine suggested a number such as 10^8 CDs be chosen as the upper limit of toxin a host-vector system might express if it is to be removed from BL3 to a lower containment level.

"Dr. Levine said *E. coli* K-12 is not an invasive pathogenic organism. Several factors are necessary for pathogenicity, and even for *Shigella* more is required than simply expression of the toxin gene. An attenuated Shiga bacillus

vaccine strain which produces as much Shiga toxin as the parent pathogenic strain but lacks invasiveness factors did not cause disease when fed to human volunteers. In the single case in which the strain reverted to invasive, the human volunteer became ill.

"Dr. Formal said he had constructed a strain by introducting half of the *Shigella flexneri* chromosome and an SLT converting phage into *E. coli* K–12. The introduced *Shigella flexneri* genes were thought to include all of the genes necessary for virulence. The constructed strain had no effect on monkeys in feeding experiments although it produced 10^3 CDs per mg protein of SLT under optimal laboratory conditions.

"Dr. Gill asked whether concern exists about transfer to other organisms of a high copy number plasmid carrying the Shiga toxin gene and its control elements.

"Dr. Newland said the probability of transfer of the SLT or Shiga toxin gene by phage in nature is higher than the probability of transfer from K–12 by poorly mobilizable plasmid vectors.

"Dr. Gottesman asked what laboratory conditions are necessary to obtain optimal expression of the SLT gene in the *E. coli* K–12 host-vector system. Dr. Newland replied that antibiotic pressure is necessary. In addition, several other procedures such as using specially treated medium are also required. If an SLT clone is simply cultured in the conditions usually used to culture the host-vector system, toxin production is generally a factor of 10^2 lower than the highest level of expression obtained under optimal conditions with that clone.

"Dr. Newland said he had observed that the recombinant plasmid carrying the SLT gene appears to be rapidly lost from the *E. coli* host-vector system in the absence of selective antibiotic pressure. The plasmid without the SLT gene is not so rapidly lost in the absence of selective pressure. He and Dr. O'Brien hypothesized that high levels of toxin may be toxic to bacteria. The rapid loss of the recombinant plasmid in the absence of selective pressure may be an additional safety factor.

"Dr. Gottesman asked whether the working group would consider modifying Appendix F–IV–H by raising the upper level of toxin expression to 10^8 CDs per mg protein in cell lysates in exchange for an assurance that the plasmid will be rapidly lost in the absence of antibiotic pressure. Alternatively, an upper level of expression need not be fixed if the plasmid will be rapidly lost since rapid plasmid loss will provide a measure of safety.

"Dr. Levine said one problem with Dr. Gottesman's proposal is that language generic for experiments involving *E. coli* may not apply to experiments involving *Vibrio* or *Shigella*. A second concern is the variability of the SLT assay; without an internal standard it is difficult to know how much toxin is produced. He asked Dr. O'Brien how great a difference is observed using the same procedure from experiment to experiment. Dr. O'Brien replied that a 100 fold difference in the amount of CDs produced may be observed from experiment to experiment.

"Dr. Gill moved that Appendix F–IV–H be amended to read in part:

'E. coli host-vector systems expressing the Shiga-like toxin gene product may be moved from BL3+EK1 to BL2+EK1 containment conditions provided that: (1) The amount of toxin produced by the modified host vector systems be no greater than that produced by the positive control strain 933 *E. coli* 0157:H7, grown and measured under optimal conditions, or ten times this level if the maintenance of the plasmid carrying the gene is dependent upon growth in the presence of an antibiotic . . . .'

"Dr. Levine suggested the motion be amended to read in part:

'E. coli host-vector systems expressing the Shiga-like toxin gene product may be moved from BL3+EK1 to BL2+EK1 containment conditions provided that: (1) The amount of toxin produced by the modified host vector strain be no greater than 10^8 CDs per mg protein. . . .'

"Dr. Formal suggested the motion should name a toxin producing strain as the standard rather than citing a specific number. He suggested *Shigella dysenteriae* 1 strain 60R be used for this purpose. *Shigella dysenteriae* 1 strain 60R, a rough strain not capable of colonizing the human gut, produces about ten times more toxin than 933 *E. coli* 0157:H7. Language specifying a specific strain would provide an internal standard and permit comparison from laboratory to laboratory. Dr. Kopecko agreed.

"Dr. Levine amended his motion to require use of *Shigella dysenteriae* strain 60R as the standard strain. Dr. Formal seconded this motion.

"Dr. Gottesman seconded Dr. Gill's original motion in order to permit a vote on this motion. By a vote of two in favor, four opposed, and no abstentions, Dr. Gill's motion was refused by the working group. . . .

"The working group then voted on Dr. Levine's motion. By a vote of five in favor, one opposed, and no abstentions, the working group accepted this motion. . . .

"Dr. Kopecko then offered the following motion:

'Campylobacter species have long been recognized as members of the family *Vibrionaceae*. Recently *Campylobacter* species have been separated taxonomically into an orphan genus. Because of the similarities between *Campylobacter* and *Vibrionaceae*, the Working Group on Toxins recommends that for purposes of cloning SLT *Campylobacter* can be considered as members of the *Vibrionaceae*.'

"Dr. Levine seconded this motion.

"Dr. Gill said the most important consideration in evaluating a proposal is not the species-from which the gene was originally isolated but the characteristics of the gene's product and the host-vector system. He said he would support Dr. O'Brien's request to permit cloning of the SLT gene from *Campylobacter*. He thought Dr. Kopecko's motion did not convey the idea that the gene, and the characteristics of its product are the most important considerations. He suggested a substitute motion which would not refer to the source of the gene he developed.

"Dr. Formal said although he agreed with Dr. Gill, at the present time it would be difficult to precisely define the characteristics of SLT toxin. A substitute motion would have to contain such a definition.

"Dr. Milewski said Dr. Kopecko's motion was preferable because of the way the August 19, 1985, **Federal Register** announcement had been written. She said the minutes of the working group meeting would show the group strongly supports the concept that the gene is the most important consideration.

"Dr. Levine called the vote on Dr. Kopecko's motion. By a vote of six in favor, none opposed, and no abstentions, the working group approved of the motion. . . ."

The RAC discussed Dr. O'Brien's proposal at the September 23, 1985, meeting.

By a vote of seventeen in favor, none opposed, and no abstentions the RAC recommended NIH accept the working group recommendation to approve Dr. O'Brien's request as it appeared in the August 19, 1985, **Federal Register** with *Campylobacter* species considered to be members of the *Vibrionaceae*.

By a vote of seventeen in favor, none opposed, and no abstentions the RAC recommended the NIH accept the working group recommendation that Appendix F–IV–H be amended to read in part:

"*E. coli* host vector systems expressing the Shiga-like toxin gene may be moved from BL3+EK1 to BL2+EK1 containment conditions provided that: (1) The amount of toxin produced by the modified host-vector systems be no greater than that produced by the positive control strain *Shigella dysenteriae* 60R, grown and measured under optimal conditions; and (2) the cloning vehicle is to be an EK1 vector preferably belonging to the class of poorly mobilizable plasmids such as pBR322, pBR328, and pBR325."

I accept these recommendations and Appendix F-IV-H has been modified accordingly.

B. Request To Clone a Hybrid Toxin Gene in E. coli K-12

Dr. John Murphy of the University Hospital of Boston University Medical Center in a letter dated July 30, 1985, requested permission to construct a hybrid molecule in which the gene coding for interleukin-2 (IL-2) is joined to a segment of the gene encoding diphtheria toxin. The diphtheria gene toxin segment encodes the A subunit and portions of the B subunit of the toxin. The hybrid gene would be cloned in *E. coli* K-12 host-vector systems.

The goal of the project is the development and testing of novel therapeutic agents targeted at the interleukin 2 (IL-2) receptor to combat rejection and/or create a state of tolerance in organ transplantation. As a by-product, some of the agents may have therapeutic potential for patients with leukemia and lymphoma.

This proposal was published in the August 19, 1985, **Federal Register** for public comment. No comments were received on the proposal during the comment period.

On August 16, 1985, the RAC Working Group on Toxins considered this proposal.

Although not part of the action requested in this proposal, it should be noted that Dr. Murphy was previously granted permission (Appendix F-IV-I, 49 FR 46279) to propagate under BL4 containment a hybrid molecule composed of the gene coding for α-melanocyte stimulating hormone (α-MSH) and a segment of the diphtheria toxin gene. On August 16, 1985, the RAC Working Group on Toxins considered a request from Dr. Murphy to remove these clones from BL4 containment. Dr. Murphy submittted data on the effects on guinea pigs challenged with: (1) The viable and boiled *E. coli* K-12 host-vector system (the control); (2) the viable and boiled *E. coli* K-12 host-vector system carrying and expressing the hybrid gene; and (3) the conjugate protein. After thorough discussion, the working group recommended Dr. Murphy be permitted to proceed with experiments involving clones carrying the α-MSH-diphtheria toxin gene at BL2 containment with BL3 practices. I previously accepted this recommendation.

The portion of the minutes of the August 16, 1985, meeting of the Working Group on Toxins pertaining to Dr. Murphy's proposal to construct and clone a hybrid gene composed of the genes coding for IL-2 and portion of diphtheria toxin reads as follows:

"Dr. Gottesman said in this proposal, Dr. John Murphy of the University Hospital of the Boston University Medical Center requests permission to construct a hybrid gene composed of the gene coding for interleukin-2 (IL-2) and the *SphI* segment of the diphtheria toxin gene. The hybrid gene would be cloned in *E. coli* K-12 host-vector systems.

"The long-term goal of this research is to develop novel IL-2 receptor-targeted cytotoxic agents to combat organ rejection and to create a state of graft "tolerance" in organ transplantation. Some of the products may have therapeutic potential for treating leukemia and lymphoma.

"Dr. Gottesman said the primary difference between the α-MSH-diphtheria toxin hybrid molecule proposal and the IL-2-diphtheria toxin hybrid molecule proposal is the type of cell postulated to be sensitive to the conjugate problem.

"Dr. John Williams of Beth Israel Hospital said IL-2 receptors are found on proliferating, antigen-activated T cells and to a lesser extent on activated B cells. These cells would be the targets of the IL-2-diphtheria toxin hybrid protein. Resting or memory lymphocytes do not express IL-2 receptors. There is no evidence of IL-2 receptors on tissues outside of the lymphoid compartment.

"Dr. Williams said the goal of this project is to selectively remove activated T cells and activated B cells during a well controlled time period following organ transplantation. It is hoped the IL-2-diphtheria toxin molecule would be more selective than the immunosuppressive techniques currently in use. Experiments in mice using anti-IL-2 receptor-monoclonal antibody conjugates to suppress cells which cause rejection in cardiac transplants support this hypothesis. In these experiments, the life of the graft in mice was extended from 10-14 days to three months or more in 80 percent of the animals.

"Dr. Gill said the 'worse case' scenario he could conjecture would be that an animal's T cells and B cells would be eliminated by this hybrid protein. A long observation of test animals might be necessary before such an effect would be detected. Dr. Habig said a long observation period might also be necessary for animals treated with the α-MSH-diphtheria hybrid protein.

"Dr. Levine said the IL-2-diphtheria toxin hybrid protein could be an important therapeutic agent, but it would be a new toxin and could be harmful. He suggested containment be initially set at the BL4 level.

"Dr. Martin said the largest BL4 facility at the Frederick Cancer Research Facility is run by NIAID. Any request by Dr. Murphy for use of the facility will need to be considered by NIAID in relation to other competing requests.

"Dr. Levine said since little is known about the potential toxicity of the proposed hybrid protein, the working group approach should be conservative. If BL4 containment is not available, the experiment should be permitted under BL3 containment with a recognition that concern exists about the nature of the proposed hybrid protein.

"Dr. Gottesman suggested containment could be set at BL3 with a requirement for the use of EK2 host-vector systems. Dr. Levine said he would accept the suggestion to specify EK2 vectors; he would not accept the suggestion to specify EK2 hosts.

"Dr. Gottesman asked whether any type of risk assessment experiment could be performed which would answer basic questions about the nature of the protein.

"Dr. Gill said risk assessment experiments with this hybrid protein would differ from previous risk assessment protocols because acute lethality is not a likely outcome. Tests would have to be devised to look for chronic impairment of the immune system. This type of data and the protocols necessary to generate it are different from that generally required for toxins.

"Dr. Gill offered a motion to recommend permission to proceed under BL3 conditions; EK2 vectors would be used. Dr. Levine said he would prefer the language of the motion specified the use of 'poorly mobilizable plasmid vectors such as the EK2 certified plasmids.' Dr. Gill agreed to this modification. Dr. Levine seconded the motion.

"By a vote of five in favor, none opposed, and no abstentions, the working group agreed this recommendation should be forwarded to the RAC."

The RAC discussed this proposal at the September 23, 1985, meeting.

The RAC considered the minutes of the August 16, 1985, meeting of the Working Group on Toxins and the advice of two *ad hoc* consultants, Dr. John Collier of Harvard Medical School and Dr. Thomas Waldmann of the National Cancer Institute. By a vote of twelve in favor, none opposed, and four abstentions, the RAC recommended the experiments be permitted at BL2 containment plus BL3 practices with the use of poorly mobilizable plasmid vectors such as EK2 certified plasmids. I accept this recommendation and appropriate language has been added to Appendix F of the NIH Guidelines.

C. Proposed Amendments of Appendix C-III of the NIH Guidelines

BioTechnica International, Inc., of Cambridge, Massachusetts, in a letter of August 13, 1985, proposed the following amendments to Appendix C-III of the NIH Guidelines. The first paragraph of Appendix C-III would be amended to read as follows:

"Experiments which use *Saccharomyces cerevisiae* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines."

This amendment would extend the current exemption to include strains other than "laboratory strains."

A new second paragraph would be added to Appendix C-III to read as follows:

"Experiments which use *Saccharomyces uvarum* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines."

This proposal was published in the August 19, 1985, **Federal Register** for public comment. No comments were received during the comment period.

The RAC considered this proposal at the September 23, 1985, meeting. It was noted that no industrial or wild *S. cerevisiae* strains are known to be pathogenic to either man or animals. In fact, products containing *S. cerevisiae*, including beer, wine, brewer's yeast tablets, bread, and yeast extract flavor enhancers, have been consumed by humans for thousands of years. Brewer's and distiller's yeasts are also consumed by the ton by domestic livestock.

Laboratory and non-laboratory strains are virtually identical with respect to their morphology, biochemistry, and growth habits. The arrangement of the genomes (i.e., the genetic maps) of the two classes are largely indistinguishable. These similarities are not surprising given that all laboratory strains were ultimately derived from wild and industrial yeasts.

Most brewing strains sporulate poorly, and the few spores that can be obtained have extremely poor viability. Thus, industrial strains tend to be much less capable of mating than laboratory strains, many of which have been bred and selected for increased ability to mate, sporulate and germinate. These factors together lead to a considerable phenotypic stability for most industrial strains that, in fact, make them desirable hosts for recombinant DNA experiments.

Evidence was presented on the great similarity between *S. cerevisiae* and *S. uvarum*.

The RAC accepted these arguments and by vote of seventeen in favor, none opposed, and no abstentions, recommended approval of the proposal as it appeared in the August 19, 1985, **Federal Register**.

I accept this recommendation and Appendix C-III has been modified.

D. Proposed Amendment of Part III of the NIH Guidelines

In a memorandum dated February 12, 1985, Dr. Bernard Talbot, Deputy Director of the National Institute of Allergy and Infectious Diseases, noted that under the NIH Guidelines for Research Involving Recombinant DNA Molecules certain proposals are received by NIH for review by the NIH Recombinant DNA Advisory Committee (RAC) and subsequent NIH approval.

Recently other Federal agencies have made steps toward assuming new roles in review of recombinant DNA proposals. Because of these developments, it could now happen that a proposal submitted to the NIH for RAC review and NIH approval may be also submitted to another Federal agency for review.

Dr. Talbot stated:

"In such a case, I believe it would be advantageous for NIH to have the option of deferring to the review and approval by the other Federal agency rather than always going through review and approval by both the other Federal agency and the NIH. In order to allow this, I request that the following proposed change in the NIH Guidelines be issued for public comment, and placed on the agenda of the next RAC meeting. I propose that a new sentence be added at the end of Section III-A of the Guidelines ('Experiments that Require RAC Review and NIH and IBC Approval Before Initiation') just before Section III-A-1 of the Guidelines, as follows: 'If experiments in this category are submitted for review to another Federal agency, the submitter shall notify ORDA; ORDA may then determine that such review serves the same purpose, and based on that determination, notify the submitter that no RAC review will take place, no NIH approval is necessary, and the experiment may proceed upon approval from the other Federal Agency.' "

The proposal was published in the March 28, 1985, **Federal Register** (50 FR 12456) for comment.

One comment was received on the proposal. Dr. Carol Lax Gronbeck of Genentech, Inc., of South San Francisco, California, wrote:

"At the present time, the Office of Recombinant DNA Activities and the NIH Recombinant DNA Advisory Committee represent the only formal government body with the expertise and large base of experience to evaluate research proposals. Genentech agrees that dual review of proposals would seem unnecessary; however, concern also exists that at this time, various Federal agencies presented with RDNA proposals may not have all of the necessary expertise and pertinent experience in-house to thoroughly review the proposals. Since the function of such review includes determination that the experiment will not adversely affect man and/or the environment, it is especially important that the appropriate experts evaluate the information. To receive proper evaluation, and until such time that Federal agencies have in place a biotechnology review policy such as that proposed by the Office of Science and Technology Policy, Genentech suggests a revision of Dr. Talbot's amendment to read as follows:

'If experiments in this category are submitted for review to another Federal agency, the submitter shall notify ORDA and may provide information regarding the necessity of dual review; ORDA may then determine if dual review is necessary based upon whether or not the reviews serve the same purpose and whether the other Federal agency has the appropriate expertise and experience to thoroughly review the proposals in a timely manner, and. . .'

"Genentech believes that RAC should enjoy the privilege of exercising an option to defer review, and it is our belief that this revision to the amendment still permits RAC the desired option, while continuing to provide constructive advice to those conducting research and protection of the public and environment."

The proposal was first considered by the RAC at the May 3, 1985, meeting. At that meeting, RAC voted to table the proposal by a vote of seventeen in favor,

none opposed, and no abstentions. Dr. Talbot's proposal was again considered by the RAC at the September 23, 1985, meeting. By a vote of seventeen in favor, none opposed, and no abstentions, the RAC recommended the NIH accept this proposal. I accept this recommendation and Section III–A has been modified.

II. Summary of Actions

A. Amendment of Section F–IV–H of the NIH Guidelines

Appendix F–IV–H has been modified to read as follows:

"Appendix F–IV–H. The intact structural gene(s) of the Shiga-like toxin from bacterial species classified in the families *Enterobacteriaceae* or *Vibronaceae* including *Campylobacter* species may be cloned in *E. coli* K–12 under BL3+EK1 containment conditions.

"*E. coli* host-vector systems expressing the Shiga-like toxin gene product may be moved from BL3+EK1 to BL2+EK1 containment conditions provided that: (1) the amount of toxin produced by the modified host-vector systems be no greater than that produced by the positive control strain *Shigella dysenteriae* 60R, grown, and measured under optimal conditions; and (2) the cloning vehicle is to be an EK1 vector preferably belonging to the class of poorly mobilizable plasmids such as pBR322, pBR328, and pBR325.

"Nontoxinogenic fragments of the Shiga-like toxin structural gene(s) may be moved from BL3+EK1 to BL2+EK1 containment conditions or such nontoxic fragments may be directly cloned in *E. coli* K–12 under BL2+EK1 conditions provided that the *E. coli* host-vector systems containing the fragments do not contain overlapping fragments which together would encompass the Shiga-like toxin structural gene(s)."

B. Addition of a New Appendix F–IV–K to the NIH Guidelines

A new Appendix F–IV–K is added to the NIH Guidelines as follows:

"A hybrid gene in which the gene coding for interleukin 2 (IL–2) is joined to a specified segment of the gene encoding diphtheria toxin may be propagated in *E. coli* K–12 host-vector systems under BL2 containment plus BL3 practices, with the use of poorly mobilizable plasmid vectors such as EK2 certified plasmids."

C. Amendment of Appendix C–III of the NIH Guidelines

The first paragraph of Appendix C–III is amended to read as follows:

"Experiments which use *Saccharomyces cerevisiae* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines."

A new second paragraph is added to Appendix C–III to read as follows:

"Experiments which use *Saccharomyces uvarum* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines."

D. Modification of Section III–A of the NIH Guidelines

A new sentence is added to the end of Section III–A of the NIH Guidelines ("Experiments that Require RAC Review and NIH and IBC Approval Before Initiation") just before Section III–A–1 of the NIH Guidelines as follows:

"If experiments in this category are submitted for review to another Federal agency, the submitter shall notify ORDA; ORDA may then determine that such review serves the same purpose, and based on that determination, notify the submitter that no RAC review will take place, no NIH approval is necessary, and the experiment may proceed upon approval from the other Federal Agency."

Dated: November 12, 1985.

James B. Wyngaarden, M.D.,

Director, National Institutes of Health.

[FR Doc. 85–27880 Filed 11–21–85; 8:45 am]

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federal register

Friday
November 22, 1985

Part VII

Department of Education

34 CFR Parts 500, 501, etc.
Bilingual Education; Program Implementation; General Provisions; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 500, 501, 505, 510, 514, 525, 526, 527, 537, 561, 573, and 574

Bilingual Education; General Provisions; Basic Programs (Programs of Transitional Bilingual Education, Programs of Developmental Bilingual Education, and Special Alternative Instructional Programs); Family English Literacy Program; Special Populations Program; Program for the Development of Instructional Materials; Educational Personnel Training Program; Training Development and Improvement Program; and Short-Term Training Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary of Education proposes to issue general provisions to govern programs authorized under the Bilingual Education Act and specific regulations to implement the Basic Programs, the Family English Literacy Program, the Special Populations Program, the Program for the Development of Instructional Materials, the Educational Personnel Training Program, the Training Development and Improvement Program, and the Short-Term Training Program. These proposed regulations would implement the Educational Amendments of 1984, which substantively amended the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act, (Title VII of the Act).

DATES: Comments must be received on or before January 21, 1986.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Carol Pendas Whitten, Director, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), 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: William A. Wooten, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, D.C. 20202. Telephone (202) 245-2600.

SUPPLEMENTARY INFORMATION:

Major Objectives of These Regulations

The major objectives of this regulatory package are to:

(a) Inform local educational agencies (LEAs) that the Act gives them substantial discretion to determine the extent of native language use in transitional bilingual education programs funded under section 721(a)(1).

(b) Expand parental involvement in the educational decisions relating to their children.

(c) Increase emphasis on building local capacity to operate programs of instruction for the limited English proficient.

(d) Ensure that limited English proficient children obtain proficiency in English as quickly as possible so that they can effectivley participate in the regular educational program.

The proposed regulations interpret and implement Title VII as amended and, when adopted in final form, will apply to applications submitted and grants awarded, beginning in fiscal year 1986.

The following is a summary of the proposed regulations:

Part 500—Bilingual Education: General Provisions

The proposed General Provisions establish general rules applicable to all Title VII programs and all grants awarded under the Act.

Part 501—Bilingual Education: Basic Programs

The regulations in Part 501 apply to the Basic Programs of the Act: transitional bilingual education, developmental bilingual education, and special alternative instruction. Funding for these programs is available for local educational agencies (LEAs) and institutions of higher education (IHEs) applying jointly with one or more LEAs. The regulations are structured to permit the Secretary to conduct separate, annual competitions for the three programs.

The Secretary encourages each LEA to apply for the type of authorized program that provides the method of instruction most appropriate for meeting the educational needs of the local limited English proficient (LEP) population. The Secretary intends to provide maximum flexibility to LEAs in implementing these projects, while ensuring that all funded projects comply with the requirements of the Act.

Transitional Bilingual Education

The Secretary wishes to ensure that LEAs understand the extent of the discretion granted to them under the Act to make educational judgments about the extent of native language instruction used in transitional bilingual education projects. Section 703(a)(4)(A) of the Act defines program of transitional bilingual education to mean:

> a program of instruction, designed for children of limited English proficiency in elementary or secondary schools, which provides, with respect to the years of study to which such program is applicable, structured English language instruction, and, to the extent necessary to allow a child to achieve competence in the English language, instruction in the child's native language. Such instruction shall incorporate the cultural heritage of such children and of other children in American society. Such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

The statute specifically prohibits the Secretary from promulgating regulations which further define, restrict, or expand upon the statutory definition of the program found in section 703(a)(4).

Thus, any project funded as a program of transitional bilingual education under this section of the Act must make provision for native language instruction of LEP participants only to the extent necessary to allow them to achieve competence in English and to meet local grade-promotion and graduation standards. The Act grants LEAs considerable discretion to decide the extent and duration of native language instruction needed, and the manner in which it will be used in their projects, when responding to the specific, changing, educational needs of participating LEP students. The statute does not prescribe the minimum amount of time or instruction required to meet this standard. LEAs are in the best position to make these educational judgments.

If a school district is unable to make any provision for native language instruction, or determines that providing native language instruction in its educational program is inconsistent with the educational needs of LEP students to be served, then its application cannot be considered for funding as a program of transitional bilingual education. However, its application may be submitted for consideration under the Basic Programs competition as a special alternative instructional program, authorized under section 721(a)(3) of the Act. LEAs should be aware that funding for special alternative instructional programs in years when the appropriation does not exceed $140 million is limited to 4 percent of the total appropriation. When the appropriation does exceed $140 million, the Secretary

shall reserve one half of the appropriation in excess of $140 million for special alternative instructional programs. In the latter case, the reservation may not exceed 10 percent of the total appropriation.

The Secretary specifically invites comments and questions on methods to provide greater LEA flexibility in programs of transitional bilingual education, within the bounds of the statute.

Transitional Bilingual Education: Native Language

The Secretary also wishes to emphasize that native language instruction in a program of transitional bilingual education must be given only in the native language of the LEP participants. For example, a student properly identified as LEP having a native language of French may not be placed in a program of transitional bilingual education which uses Italian as the native language of instruction. Similarly, the statute does not authorize a child to be placed in a transitional bilingual education program which uses his or her grandparents' native language as the native language of instruction if the language is not the child's native language.

Parental Involvement

The Secretary believes that it is important for parents to be involved in decision-making about which educational program best suits their children. The statute and these regulations provide for three means of parental involvement: (1) Parental participation in an application advisory committee; (2) parental participation in a parent advisory committee during the implementation of each project; and (3) each parent's participation in determining whether his or her child would benefit from and should participate in particular programs provided by the LEA.

Applicants are required to establish an application advisory council. A majority of the applicant's advisory council must be composed of parents and other representatives of the children to be served in the proposed project. The LEA must submit documentation of its consultation with the council in developing the application and the council's specific comments on the application. These comments must show the council's participation in and comments on the decision by the LEA to submit its application as a program of transitional bilingual education, a program of developmental bilingual education, or a special alternative instructional program. The LEA must also assure that if its project is funded, it will establish a parent advisory committee to provide for continuing consultation concerning the project. The majority of the parent advisory committee must be composed of parents of LEP children participation in the project. Members of the application advisory council may continue as members of the parent advisory committee as long as the other requirements of the parent advisory committee are complied with.

These regulations also require that parents or other legal guardians of children identified for enrollment in these projects, including LEP children and children whose language is English, be informed of the reasons for selection of their child, the alternative educational programs available in the LEA, the instructional alternatives that the LEA might have chosen for LEP students, and the nature of the program offered at the LEA, including (1) the instructional method to be used; (2) the instructional goals of the project; (3) the expected progress of the child in the project, including how quickly the child is expected to enter the regular classroom; and (4) the past effectiveness of comparable projects using a similar instructional method. LEAs are also required to inform parents or legal guardians—(1) that they have the right to refuse to allow their child to participate in the project, and (2) at appropriate intervals, of the progress of their child in the program including the extent to which the child is meeting the instructional goals of the project.

The Secretary recommends that LEAs, in meeting these requirements of the statute, inform parents and legal guardians of examples of alternative programs the LEA could have chosen and could choose in the future to meet the needs of LEP children and the extent to which parents and legal guardians will be involved in the ongoing implementation and administration of the project. In addition, in the case of a child whose language is English, the LEA should inform the parents of that child of the reason for selection of their child for participation in the program.

The Secretary specifically invites comments on methods for the implementation of the statutory requirements for parental involvement.

Capacity and Commitment

The recipients of Part A instructional grants are required by statute to build their capacity to provide a program of instruction for LEP children on a regular basis when Federal assistance for the project is reduced or no longer available. The proposed regulations specify that to carry out this purpose, the Secretary will fund a project only if the applicant sets forth a realistic plan in its application to develop its programmatic capacity for serving LEP children and to assume financial responsibility for the program. The program must be of sufficient size, scope, and quality to promise significant improvement in the education of LEP children. The Secretary will consider, among other factors, the prior experience of existing and past grantees and their success or lack of success in building capacity to continue a project.

The Secretary has determined that the best evidence of increased capacity and commitment at the local level is increased commitment of local funds over the project period. The Secretary will reduce the level of Federal support in each successive year of the project unless the applicant's plan provides for an increased commitment of local funds each year to provide expanded special services for greater numbers of LEP children. Any such reductions will be based on negotiations with each applicant. Alternatively, based on unforeseen circumstances such as a substantial influx of LEP children in the school district of the LEA, the grantee—in its application for a successive budget period under the project—may amend its original plan to demonstrate to the Secretary that it will provide expanded special services. The Secretary, in annually determining the funding level at which to continue a project, and in determining whether to renew a project after its first three years, will consider evidence of the extent to which the grantee has successfully carried out its capacity building plan.

Application Procedures

Applicants must provide, in their applications, data and information required by the statute and these regulations. Applications will be evaluated using specified selection criteria (with a maximum possible score of 100 points) and on the basis of additional factors required by the Act and described in Part 501. The annual distribution of points designated for the additional factors will be published in the **Federal Register.** Commenters are specifically invited to comment on the weighted selection criteria as well as the distribution of points designated for the additional factors.

Parts 525, 526 and 537—Family English Literacy Program, Special Populations Program, and Program for the Development of Instructional Materials

These three parts govern three programs funded under Part A of the Act. Part 525 governs the family English literacy program authorized by section 721(a)(5) of the Act. Family English literacy programs are designed to aid in the elimination of the intergenerational cycle of illiteracy. These programs provide English literacy training for LEP adults and out-of-school youth, with preference given to family members of LEP children enrolled in projects assisted under the Act, to help them acquire English language competence and facilitate their children's educational achievement.

Part 526 implements the special populations program created by section 721(a)(6) of the Act. The special populations program authorizes grants for the establishment, operation, and improvement of bilingual preschool, special education, and gifted and talented programs preparatory or supplementary to programs such as those assisted under the Act. Any special education program for handicapped children funded under this part must be designed for LEP children who also receive services in accordance with the requirements of Part B of the Education of the Handicapped Act (EHA–B), 20 U.S.C. 1411–1420, and must supplement those services.

Part 537 implements section 721(a)(7) of the Act, which authorizes grants to support the development of instructional materials where those materials are needed but commercially unavailable.

The regulations for each of these parts describe the eligibility requirements, relevant definitions, application procedures, and selection procedures for each program.

Under the statute, the Family English Literacy Program and Special Populations Program are open to local educational agencies (LEAs), institutions of higher education (IHEs)—including junior and community colleges—and private nonprofit organizations, applying separately or jointly. Neither the statue nor these regulations impose any limitations on the types of applicants eligible to apply under the Program for the Development of Instructional Materials.

Applications will be evaluated using specified selection criteria (with a maximum possible score of 100 points) and on the basis of additional factors required by the Act and described in the regulations. The Secretary proposes to apply these additional factors to both LEA and non-LEA applicants. The annual distribution of points designated for the additional factors will be published in a notice in the **Federal Register**. Commenters are specifically invited to comment on the weighted selection criteria as well as the distribution of points designated for the additional factors.

Parts 561, 573, 574—Educational Personnel Training Program, Training Development and Improvement Program, and Short-Term Training Program

These three parts govern three training programs authorized under Part C of the Act, and describe the eligibility requirements, applicable regulations, definitions, selection criteria, and additional factors considered, if any. Part 561 implements the educational personnel training program established by section 741(a)(1) of the Act. The program authorizes grants to institutions of higher education for the establishment, operation, and improvement of training programs for educational personnel preparing to participate, or participating, in programs for limited English proficient persons. These programs must emphasize opportunities for career development, advancement, and lateral mobility. In order to address the varying needs throughout the Nation for qualified personnel to meet the diverse educational needs of LEP children, this program provides funding for both degree and non-degree training programs.

The regulations include the requirement that applicants consult with parents and other representatives of LEP children both prior to submission of the application and during the ongoing implementation of the project. This consultation must be through an application advisory council and an advisory committee selected by and predominantly composed of parents of LEP children enrolled in LEAs whose educational personnel have training needs similar to those addressed by the project. The Secretary specifically invites comments on these proposed application advisory council and present advisory committee requirements.

Part 573 governs the training development and improvement program established by section 741(a)(3) of the Act. This program authorizes grants to institutions of higher education to encourage reform, innovation, and improvement in graduate education curricula, in the structure of the academic profession, and in recruitment and retention of higher education and graduate school faculties, as related to programs for limited English proficient persons.

Part 574 governs the short-term training program established by section 741(a)(4) of the Act. The program authorizes the operation of short-term training institutes designed to improve the skills of educational personnel and parents. Eligible applicants include local educational agencies, State educational agencies, and institutions of higher education—including junior or community colleges—and private for-profit or nonprofit organizations which apply after consultation with or jointly with one or more LEAs or SEAs. The regulations allow the Secretary to establish annual priorities for teachers, educational personnel other than teachers, or parents. The annual priorities will be announced in a notice published in the **Federal Register**.

The Secretary evaluates applications under each of these parts on the basis of the selection criteria, with a maximum possible score of 100 points, and any additional factors required by the Act and these regulations. The annual distribution of points designated for the additional factors will be published in a notice in the **Federal Register**. Commenters are specifically invited to comment on the weighted selection criteria as well as the distribution of points designated for the additional factors.

Other Regulations Under the Act

The following Parts of Title 34 CFR have been codified:

(a) Part 562—Fellowship Program implements sections 741(a)(2) and 743, and was published in the **Federal Register** on August 16, 1985 at 50 FR 33308.

(b) Part 548—State Educational Agency Program implements section 732, and was published in the **Federal Register** on August 16, 1985 at (50 FR 33202).

A notice of proposed rulemaking implementing section 733 of the Act, concerning evaluation requirements, was published in the **Federal Register** on May 24, 1985 at 50 FR 21578. When published in final form these regulations will add a new subpart F to part 500, (34 CFR 500.50–500.52).

The following Parts of Title 34 CFR will be proposed for codification in the future:

Part 524—Programs of Academic Excellence will implement section 721(a)(4).

Part 549—Evaluation Assistance Centers Program will implement section 734.

Part 575—Multifunctional Resource Centers will implement sections 741(a)(5) and 742.

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. To the extent that these proposed regulations affect small entities, they are intended to impose minimal burdens on applicants and grantees. The selection criteria and other requirements are designed to relieve regulatory and paperwork burden on small entities participating in the programs.

Paperwork Reduction Act of 1980

Sections 501.20, 501.22, 501.23, 501.24, 501.25, 501.31, 501.40, 525.20, 525.21, 525.31, 526.32, 526.40, 537.31, 561.20, 561.31, 561.32, 574.32, and 574.33 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 3208, New Executive Office Building, Washington, D.C. 20503; Attention: Joseph F. Lackey, Jr.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

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 Room 421, Reporters Building, 300 7th Street, SW., 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.

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 Parts 500, 501, 525, 526, 537, 561, 573, and 574

Adult education, Bilingual education, Colleges and universities, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Teachers.

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 Number 84.003, Bilingual Education: Basic Programs, Family English Literacy Program; Special Populations Program; Program for the Development of Instructional Materials; Evaluation Assistance Centers Program; Educational Personnel Training Program; Training Development and Improvement Program, and Short-Term Training Program.)

Dated: November 19, 1985.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Parts 500, 501, 525, and 526; removing Parts 505, 510, 514, and 527; and adding new Parts 537, 561, 573, and 574 as follows:

1. Part 500 is revised to read as follows:

PART 500—BILINGUAL EDUCATION: GENERAL PROVISIONS

Subpart A—General

Sec.

500.1 What programs are governed by these regulations?
500.2 [Reserved]
500.3 What regulations apply to these programs?
500.4 What definitions apply to these programs?

Subpart B—What Kinds of Projects Does the Secretary Assist?

500.10 What requirements pertain to all programs assisted under this Act for limited English proficient persons?
500.11 What programs are there for students of limited Spanish proficiency in Puerto Rico?

Subpart C—How Does One Apply for an Award?

500.20 What requirements pertain to SEA review of an application?

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—[Reserved]

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General

§ 500.1 What programs are governed by these regulations?

The regulations in this part apply to programs authorized under the Act. The programs governed by this part and their applicable program regulations are as follows:

(a) Basic Programs (34 CFR Part 501).

(20 U.S.C. 3231(a) (1), (2), and (3))

(b) Programs of Academic Excellence (34 CFR Part 524).

(20 U.S.C. 3231(a)(4))

(c) Family English Literacy Program (34 CFR Part 525).

(20 U.S.C. 3231(a)(5))

(d) Special Populations Program (34 CFR Part 526).

(20 U.S.C. 3231(a)(6))

(e) Program for the Development of Instructional Materials (34 CFR Part 537).

(20 U.S.C. 3231(a)(7))

(f) State Educational Agency Program (34 CFR Part 548).

(20 U.S.C. 3242)

(g) Evaluation Assistance Centers Program (34 CFR Part 549).

(20 U.S.C. 3244)

(h) Educational Personnel Training Program (34 CFR Part 561).

(20 U.S.C. 3251(a)(1))

(i) Fellowship Program (34 CFR Part 562).

(20 U.S.C. 3251(a)(2), 3253)

(j) Training Development and Improvement Program (34 CFR Part 573).

(20 U.S.C. 3251(a)(3))

(k) Short-Term Training Program (34 CFR Part 574).

(20 U.S.C. 3251(a)(4))

(l) Multifunctional Resource Centers (34 CFR Part 575).

(20 U.S.C. 3251(a)(5), 3252)

§ 500.2 [Reserved]

§ 500.3 What regulations apply to these programs?

(a) Except as described in paragraphs (b) and (c) of this section, the following regulations apply to programs authorized under the Act listed in § 500.1:

(1) The regulations in this Part 500.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR—

(i) Part 74 (Administration of Grants);

(ii) Part 75 (Direct Grant Programs);

(iii) Part 77 (Definitions That Apply to Department Regulations);

(iv) Part 78 (Education Appeal Board); and

(v) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The provisions in 34 CFR 75.217(c)–(e) (relating to the review of applications) do not apply to the State Educational Agency Program in Part 548.

(c) Except for the provisions in 34 CFR 75.51 (relating to proof of nonprofit status) the EDGAR provisions listed in paragraph (a)(2) of this section do not apply to the Fellowship Program in Part 562.

(20 U.S.C. 3221–3262)

§ 500.4 What definitions apply to these programs?

(a) *Definitions in EDGAR.* The following terms used in the parts listed in § 500.1 (except Part 562) are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Elementary school
Fiscal year
Grant period
Local educational agency; for the purpose of carrying out programs under the Act for individuals served by elementary, secondary, or postsecondary schools operated predominantly for Indian or Alaskan Native children, the term also means an Indian tribe or tribally sanctioned educational authority.
Nonprofit
Nonpublic
Preschool
Private
Project
Public
Recipient
Secondary school
Secretary
State
State educational agency

(b) *Program definitions.* The following definitions also apply to the parts listed in § 500.1:

"Act" or "Title VII" means the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98–511.

(20 U.S.C. 3221–3262)

"Educational personnel" means teachers, teacher aides, paraprofessionals, administrators, school psychologists, guidance counselors, and other persons who provide or are preparing to provide instructional or support services in programs for limited English proficient persons.

(20 U.S.C. 3221–3262)

"Family English literacy program" means a program of instruction designed to help limited English proficient adults and out-of-school youth achieve competence in the English language. These programs of instruction may be conducted exclusively in English, or in English and the student's native language. Where appropriate, the programs may include instruction on how parents and family members can facilitate the educational achievement of limited English proficient children. To the extent feasible, preference for participation in the programs must be given to the parents and immediate family members of children enrolled in programs assisted under the Act.

(20 U.S.C. 3223(a)(7))

"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 pursuant to the Alaskan Native Claims Settlement Act (85 Stat. 688) which is recognized for the special programs and services provided by the United States to Indians because of their status as Indians.

(20 U.S.C. 3232(a)(1))

"Institution of higher education" (IHE) is defined in section 1001(e) of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 3381(e))

"Limited English proficiency" and "limited English proficient," (LEP) when used with reference to an individual, means an individual—

(1)(i) Who was not born in the United States or whose native language is other than English;

(ii) Who comes from a home in which a language other than English is used most for communication; or

(iii) Who is an American Indian or Alaskan Native and comes from a home in which a language other than English has had significant impact on his or her level of English language proficiency as a result of substantial use of that other language for communication; and

(2)(i) Who, as a result of the circumstances described in paragraph (1) of the definition, has sufficient difficulty in speaking, reading, writing or understanding the English language to deny him or her the opportunity to learn successfully in classrooms in which the language of instruction is English.

(ii) The Secretary interprets an individual's difficulty in the English language as resulting from the circumstances in paragraph (1) of this definition only if that difficulty is attributable to the use of a native language other than English in the home.

(20 U.S.C. 3223(a)(1))

"Low-income," when used with respect to a family, means an annual income for a family which does not exceed the poverty level determined pursuant to section 111(c)(2) of Title I of the Elementary and Secondary Education Act of 1965.

(20 U.S.C. 3223(a)(3))

"Native language," when used with reference to an individual of limited English proficiency, means the language normally used by the individual. If the language normally used by a child cannot be determined, the language normally used by the parents or legal guardians of the child is the child's native language.

(20 U.S.C. 3223(a)(2))

"Programs of academic excellence" means programs of transitional bilingual education, developmental bilingual education, or special alternative instruction which have an established

record of providing effective, academically excellent instruction and which are designed to serve as models of exemplary bilingual education programs and to facilitate the dissemination of effective bilingual educational practices.

(20 U.S.C. 3223(a)(8))

"Program for limited English proficient persons" means any instructional program authorized under Part A of the Act.

(20 U.S.C. 3231–3262)

"Program of developmental bilingual education."

(1) The term means a full-time program of instruction in elementary and secondary schools which provides, with respect to the years of study to which the program is applicable, structured English-language instruction and instruction in a second language. The program must be designed to help children achieve competence in English and a second language, while mastering subject matter skills. The instruction must, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

(2) Where possible, classes in programs of developmental bilingual education must be comprised of approximately equal numbers of students whose native language is English and limited English proficient students whose native language is the second language of instruction and study in the program.

(20 U.S.C. 3223(a)(5))

"Program of transitional bilingual education."

(1) The term means a program of instruction, designed for children of limited English proficiency in elementary or secondary schools, which provides, with respect to the years of study to which the program is applicable, structured English language instruction, and, to the extent necessary to allow a child to achieve competence in the English language, instruction in the child's native language. The instruction must incorporate the cultural heritage of these children and of other children in American society. The instruction must, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

(2) In order to prevent the segregation of children on the basis of national origin in programs of transitional bilingual education, and in order to broaden the understanding of children about languages and cultural heritages other than their own, a program of transitional bilingual education may include the participation of children whose language is English, but in no event may the percentage of those children exceed 40 percent. The program may provide for centralization of teacher training and curriculum development, but it must serve the children in the schools which they normally attend.

(3) In courses or subjects of study such as art, music, and physical education, a program of transitional bilingual education must make provision for the participation of children of limited English proficiency in regular classes.

(4) Children enrolled in a program of transitional bilingual education must, if graded classes are used, be placed, to the extent practicable, in classes with children of approximately the same age and level of educational attainment. If children of significantly varying ages or levels of educational attainment are placed in the same class, the program of transitional bilingual education must seek to ensure that each child is provided with instruction which is appropriate for his or her level of educational attainment.

(20 U.S.C. 3223(a)(6))

"Special alternative instructional programs" means programs of instruction designed for children of limited English proficiency in elementary and secondary schools. The programs are not transitional or developmental bilingual education programs, but have specially designed curricula and are appropriate for the particular linguistic and instructional needs of the children enrolled. The programs must provide, with respect to the years of study to which the programs are applicable, structured English language instruction and special instructional services which will allow a child to achieve competence in the English language and to meet grade-promotion and graduation standards.

(20 U.S.C. 3223(a)(6))

"Tribally sanctioned educational authority" means any department or division of education operating within the administrative structure of the duly constituted governing body of an Indian tribe, as well as any nonprofit institution or organization which—

(1) Is chartered by the governing body of an Indian tribe to operate any school or otherwise to oversee delivery of educational services to members of that tribe; and

(2) Is approved by the Secretary for the purposes of carrying out programs under the Act.

(20 U.S.C. 3223(a)(2))

Subpart B—What Kinds of Projects Does the Secretary Assist?

§ 500.10 What requirements pertain to all programs assisted under this Act for limited English proficient persons?

All persons assisted under this Act must—

(a) Give priority to serving LEP children having the greatest need for those programs, particularly those children whose usual language is not English; and

(b) Be designed to enable students to achieve full competence in English.

(20 U.S.C. 3222)

§ 500.11 What programs are there for students of limited Spanish proficiency in Puerto Rico?

Projects funded in the Commonwealth of Puerto Rico may include programs of instruction, teacher training, curriculum development, research, evaluation, and testing designed to improve the English proficiency of children and may also make provision for serving the needs of students of limited Spanish proficiency.

(20 U.S.C. 3231(i))

Subpart C—How Does One Apply for an Award?

§ 500.20 What requirements pertain to SEA review of an application?

An applicant that seeks assistance under 34 CFR Parts 501 and 561 shall include evidence, in its application, that the SEA has been notified of the application and has been given an opportunity to offer recommendations on the application to the applicant and the Secretary and otherwise comply with the procedures in 34 CFR 75.156–75.160.

(20 U.S.C. 3231(e)(4))

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—[Reserved]

2. Part 501 is revised to read as follows:

PART 501—BILINGUAL EDUCATION: BASIC PROGRAMS

Subpart A—General

Sec.

501.1 Basic Programs.
501.2 Who is eligible to apply for assistance under Basic Programs?

Sec.

501.3 What regulations apply to Basic Programs?
501.4 What definitions apply to Basic Programs?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

501.10 What activities are eligible for assistance?
501.11 What level of commitment to continue the program must the applicant demonstrate?

Subpart C—How Does One Apply for an Award?

501.20 What must an applicant include in its application for assistance?
501.21 What requirements pertain to the application advisory council and the parent advisory committee?
501.22 What requirements pertain to the participation of children enrolled in nonprofit private schools?
501.23 What requirements pertain to preservice activities?
501.24 What requirements pertain to training activities?
501.25 What requirements pertain to the development of an evaluation plan?

Subpart D—How Does the Secretary Make an Award?

501.30 How does the Secretary evaluate an application?
501.31 What selection criteria does the Secretary use?
501.32 What additional factors does the Secretary consider in awarding grants?
501.33 What specific factors may the Secretary consider in awarding grants under special alternative instructional programs?
501.34 What is the length of the project period?

Subpart E—What Conditions Must Be Met by a Recipient?

501.40 What information must be given to parents?
501.41 What additional requirements apply to programs of transitional bilingual education?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General

§ 501.1 Basic Programs.

The Basic Programs provide assistance to eligible applicants for—

(a) Programs of transitional bilingual education authorized under section 721(a)(1) of the Act;

(b) Programs of developmental bilingual education authorized under section 721(a)(2) of the Act; or

(c) Special alternative instructional programs authorized under section 721(a)(3) of the Act.

(20 U.S.C. 3231(a) (1), (2), and (3))

§ 501.2 Who is eligible to apply for assistance under Basic Programs?

(a) The following parties are eligible to apply for assistance under this part:

(1) Local educational agencies (LEAs).

(2) Institutions of higher education (IHEs), including junior or community colleges, that apply jointly with one or more LEAs.

(b) In the case of an application submitted by an IHE jointly with one or more LEAs, an LEA must be designated as the applicant in the group agreement required under 34 CFR 75.128.

(20 U.S.C. 3231(b)(1)(A))

§ 501.3 What regulations apply to Basic Programs?

The following regulations apply to Basic Programs:

(a) The regulation identified in 34 CFR 500.3.

(b) The regulations in this Part 501.

(20 U.S.C. 3231(a) (1), (2), (3))

§ 501.4 What definitions apply to the Basic Programs?

The definitions in 34 CFR 500.4 apply to the Basic Programs.

(20 U.S.C. 3223, 3231(a) (1), (2), (3))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 501.10 What activities are eligible for assistance?

The Secretary provides assistance for the following activities:

(a) Establishing, operating, or improving basic programs.

(b) During the first six months of a project (unless a waiver is granted under § 501.23(b)), only preservice activities designed to prepare a grantee to operate the proposed project. These activities do not include providing instructional services to limited English proficient (LEP) children. Activities may include, but are not limited to—

(1) Program design;

(2) Materials development;

(3) Staff recruitment and training;

(4) Development of evaluation mechanisms and procedures; and

(5) Activities to involve parents in the educational program and to enable parents and family members to assist in the education of LEP children.

(c) Providing or securing training, as necessary, for personnel participating or preparing to participate in the program. To the extent possible, college or university credit must be awarded for the training.

(20 U.S.C. 3231(a) (1), (2), (3), (d)(1)(B), (f)(6))

§ 501.11 What level of commitment to continue the program must the applicant demonstrate?

(a)(1) The purpose of grants under this part is to build the capacity of the grantee to provide a program, on a regular basis, similar to that proposed for assistance, when Federal assistance under the project is reduced or no longer available.

(2) The program to be provided must be of sufficient size, scope, and quality to promise significant educational improvement for LEP children.

(b) To carry out this purpose—

(1) The Secretary funds a project only if the applicant demonstrates a realistic plan in its application to develop its programmatic capacity for serving LEP children and to assume financial responsibility for the program when Federal assistance is reduced or no longer available;

(2) The Secretary reduces the level of Federal assistance in each successive year of the project, unless—

(i) The plan under paragraph (b)(1) of this section provides for an increased commitment of local funds to provide expanded special services for greater numbers of LEP children in each successive year of the project; or

(ii) Based on unforeseen circumstances, such as a substantial influx of LEP children to the school district, the grantee—in an application for a successive budget period under the project—amends the plan under paragraph (b)(1) of this section to assure the Secretary that it will provide expanded services; and

(3) The Secretary, in determining the funding level for each successive year of a project, and in determining whether to renew a project after its first three years, in accordance with § 501.34, considers the extent to which the grantee has successfully carried out its plan under paragraph (b)(1) of this section.

(20 U.S.C. 3231(f)(5))

Subpart C—How Does One Apply for an Award?

§ 501.20 What must an applicant include in its application for assistance?

An application must—

(a) Include the information and assurances required under—

(1) Section 721(c)(2) of the Act; and

(2) 34 CFR 500.20, 501.20—501.25 and 501.32, and 501.33, if applicable; and

(b) Provide assurances that the project will—

(1) Use only qualified personnel, who are proficient in spoken and written English, and, if appropriate, any other

language or languages used for instruction;

(2) Comply with the non-supplanting requirements of section 721(f)(4) of the Act; and

(3) Comply with the parent advisory committee requirements in § 501.21(c).

(20 U.S.C. 3231)

§ 501.21 What requirements pertain to the application advisory council and the parent advisory committee?

An applicant shall—

(a) Establish an application advisory council, of which a majority must be parents and other representatives of the children to be served in the program, to assist in the development of the application;

(b) Submit with its application documentation of its consultation with the council and the council's comments on the application and on the decision to submit an application under one of the programs listed in § 501.1.

(c) Assure in its application that—

(1) In carrying out its project, the applicant will provide for continuing consultation with, and participation by, a parent advisory committee composed of parents, teachers, and other interested individuals.

(2) The parent advisory committee will be selected by and predominantly composed of parents of LEP children participating in the program and may include members of the application advisory council; and

(3) In the case of a project carried out in a secondary school, the parent advisory committee will include representatives of the secondary school students participating in the project.

(20 U.S.C. 3231(e))

§ 501.22 What requirements pertain to the participation of children enrolled in nonprofit private schools?

(a) An applicant shall demonstrate in its application that—

(1) In designing the project the applicant has consulted with appropriate private school officials and has taken into account the needs of LEP children enrolled in nonprofit private elementary and secondary schools in the area to be served; and

(2) The applicant will make provision for participation of the LEP children enrolled in nonprofit private schools—

(i) On a basis comparable to that provided for the public school children; and

(ii) Consistent with the number of those children enrolled in nonprofit private schools in the area to be served whose educational needs are of the type and whose language and grade level are of a similar type to those the program is intended to address. (See 34 CFR 75.650 Participation of students enrolled in private schools.)

(b) If the Secretary determines that an applicant is unable or unwilling to provide for the participation of LEP children enrolled in nonprofit private schools as required by this section, the Secretary—

(1) Withholds approval of the application until the applicant demonstrates that it is in compliance with the requirements of this section; or

(2) Reduces the amount of the grant by the amount the Secretary needs to—

(i) Arrange to assess the needs of children in nonprofit private schools in the area to be served; and

(ii) Carry out a program for limited English proficient persons which meets the needs of those children.

(20 U.S.C. 3231 (f)(2), (j))

§ 501.23 What requirements pertain to preservice activities?

(a) Except as provided in paragraph (b) of this section, an applicant shall demonstrate in its application how it plans to conduct the preservice activities described in § 501.10(b) for the first six months of the grant.

(b)(1) An applicant desiring a waiver of the requirement for preservice activities shall submit, as part of the application, a request for a waiver and shall demonstrate that it is already prepared to operate the proposed project successfully.

(2) If the Secretary denies a waiver request, an applicant is eligible for further funding consideration only if its original application would still meet the requirements of paragraph (a) of this section without the waiver.

(20 U.S.C. 3231(d)(1)(B))

§ 501.24 What requirements pertain to training activities?

An applicant shall demonstrate in its application that it will—

(a) Provide or secure training for the persons participating in the project that, to the extent possible, awards college or university credit for the training;

(b) Base training on an assessment of the needs of the persons who will be participating in the project and on the needs of the LEP children who will receive instruction under the project; and

(c) Apply the applicable provisions in 34 CFR 561.41 if the approved application provides for financial assistance to participants.

(20 U.S.C. 3231(f)(6))

§ 501.25 What requirements pertain to the development of an evaluation plan?

An applicant shall demonstrate that its plan for evaluating the progress and achievements of the proposed project meets the requirements of section 733 of the Act and 34 CFR 500.50–500.52.

(20 U.S.C. 3231(f)(3), 3243)

Subpart D—How Does the Secretary Make an Award?

§ 501.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 501.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(b) The Secretary then applies the additional factors listed in § 501.32 in selecting applications for new grants.

(c) For special alternative instructional programs the Secretary may also consider the specific factors in § 501.33 in selecting applications for new grants.

(20 U.S.C. 3231(a) (1), (2), (3), (c) (3), (f) (7), (g), (h))

§ 501.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Need for a program to serve LEP children.* (25 points) The Secretary reviews each application to determine—

(1) The extent and type of the needs of the LEP students to be served in the program, including—

(i) The lack of proficiency of the LEP children in speaking, reading, writing, and understanding the English language; and

(ii) The degree of proficiency of the LEP children in their native language and in other courses or subjects of study.

(2) The reliability and objectivity of the methods used to identify those needs;

(3) The adequacy of the applicant's justification for concluding that the schools selected for the project enroll the children most in need of assistance within the LEA; and

(4) The extent to which the project will serve the children most in need of assistance, within the schools selected.

(b) *Program objectives and design.* (30 points)

(1) The Secretary reviews each application to determine the appropriateness and reasonableness of

the applicant's design for meeting the needs of the LEP students to be served, including—

(i) The extent to which the instructional approach to be used will address the specific needs identified in the application; and

(ii) The extent to which other instructional approaches have been considered in choosing the instructional approach to be used in the project.

(2) The Secretary looks for the extent to which the project has specific and quantifiable objectives that will lead to the realization of the goals of the Act, including—

(i) The manner and time schedule by which the applicant will meet the needs of LEP children served by the project, including—

(A) The achievement of goals set for the children served by the project, especially the goal of achieving English language proficiency as quickly as possible;

(B) The identification of children who have achieved proficiency in the English language adequate for their effective participation in the regular educational program;

(C) The transfer of those children identified in paragraph (b)(2)(i)(B) of this section to the regular educational program as soon as possible; and

(ii) The way the applicant plans to use its resources and personnel to achieve each objective.

(3) The Secretary reviews each application to determine the quality of the training plan for the project, including the extent to which—

(i) The plan provides for training personnel in ways designed to meet the needs of LEP children to be served by the project; and

(ii) Preservice training activities, if any, and inservice training activities are designed, to the extent possible, to award college or university credit.

(c) *Evaluation plan.* (8 points) The Secretary reviews the strength of the evaluation plan and its relationship to the educational goals of the project and the activities conducted to attain those goals.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(d) *Quality of personnel.* (7 points) (1) The Secretary reviews each application to determine the quality of the following personnel:

(i) The principal classroom instructional personnel.

(ii) The project director, if one is to be used, and other personnel essential to the success of the project.

(2) The Secretary considers—

(i) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(ii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications under paragraph (d)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Commitment, capacity, and cost effectiveness.* (30 points) (1) The Secretary reviews each application to determine the extent of the applicant's commitment to special programs designed to meet the educational needs of LEP students.

(2) The Secretary reviews the strength of the applicant's plan under § 501.11(b)(1) to develop its programmatic capacity for serving LEP children and to assume financial responsibility for the program, including provision for—

(i) The gradual assumption of program costs during the proposed project period;

(ii) The adoption of successful components of the project into the regular educational programs that it conducts for LEP children;

(iii) Follow-up services to children who have achieved proficiency in English; and

(iv) Use of its non-Federal resources to provide a program on a regular basis, similar to that proposed, that will be of sufficient size, scope, and quality to promise significant improvement in the education of children of limited English proficiency in future years.

(3) If the applicant has carried out a previous project with funds under the Act, the Secretary also may consider the applicant's experience under that project in developing its programmatic capacity for serving LEP children and assuming financial responsibility for the program.

(4) The Secretary also reviews each application to determine the extent to which the project has—

(i) An adequate budget to support project activities in which costs are reasonable in relation to the objectives of the project; and

(ii) An effective plan of management that ensures proper and efficient administration of the project, including evidence that administrative costs constitute a minimum proportion of the total costs of the project.

(20 U.S.C. 3231(a) (1), (2), (3), (c)(2), (d)(1)(B), (f), (1), (3), (5), (6), 3243)

§ 501.32 What additional factors does the Secretary consider in awarding grants?

(a) In addition to the points awarded under § 501.31, the Secretary considers the following factors in awarding grants:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons.

(i) An applicant qualifies for points under this factor, if the Secretary determines that—

(A) The applicant has never received assistance under the Act; or

(B) The applicant has received assistance under the Act in the past but plans to serve a new language group. To receive points under this factor, at least 50 percent of the LEP children to be served by the project must belong to the new language group.

(ii) The Secretary does not give any points to an applicant that has received assistance under the Act in the past and plans to serve the same language group for which it received assistance.

(2) The relative need of the particular LEA(s) for the proposed program. The Secretary determines the relative need based upon—

(i) The overall concentration of LEP children in the district as compared to other applicants; and

(ii) Whether the applicant proposes to serve a significant number and proportion of LEP children who have arrived in the LEA during the last school year.

(3) The geographical distribution of LEP children. The Secretary considers the need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States.

(4) The number and proportion of children from low-income families to be benefited by the program.

(b) The Secretary distributes an additional 15 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the **Federal Register** how these 15 points will be distributed.

(20 U.S.C. 3231 (f)(7), (h))

§ 501.33 What specific factors may the Secretary consider in awarding grants under special alternative instructional programs?

(a) For special alternative instructional programs, the Secretary may additionally give priority to applications based on—

(1) The administrative impracticability of establishing a bilingual education program due to the presence of a small number of students of a particular native language;

(2) The unavailability of personnel qualified to provide bilingual instructional services; and

(3) The applicant's current or past efforts to establish a bilingual education program.

(b) The Secretary may distribute an additional 5 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the Federal Register how these 5 points are distributed.

(20 U.S.C. 3231 (c)(3), (g))

§ 501.34 What is the length of the project period?

(a) The Secretary approves a project period of three years.

(b) If a grantee wants to apply for an additional two years of funding, it must demonstrate, to the satisfaction of the Secretary, that—

(1) The program complies with all applicable requirements in the Act and these regulations governing the project;

(2) The grantee's project has made substantial and measurable progress in achieving the specific educational goals contained in the original application, including the extent to which the grantee has—

(i) Met the objectives established under § 501.31(b)(2)(i); and

(ii) Successfully carried out its plan for building the applicant's capacity as provided in § 501.11(b); and

(3) There is a continuing need for the grantee's project.

(20 U.S.C. 3231(d)(1) (A), (C))

Subpart E—What Conditions Must Be Met by a Recipient?

§ 501.40 What information must be given to parents?

(a) Before enrolling a child in the project (including each LEP child and each child whose language is English), and with sufficient advance notice to give the parents or legal guardians of the child adequate opportunity to decline enrollment, a grantee shall inform the parents or legal guardians of—

(1) The reasons for determining that the child is in need of special instructional services;

(2) The alternative educational programs that are available;

(3) The nature of the educational program for LEP students including—

(i) The instructional method to be used;

(ii) The instructional goals of the project;

(iii) The expected progress of the child in the project, including how quickly the child is expected to enter the regular educational program; and

(iv) The past effectiveness of comparable projects using a similar instructional method;

(4) The instructional alternatives for LEP students; and

(5) The option of and opportunity to decline enrollment of the child in the project.

(b) At appropriate intervals during the child's participation in the program, the grantee shall inform parents or legal guardians of the progress of their child in the program, including the extent to which the child is meeting the instructional goals referred to in paragraph (a)(3)(ii) of this section.

(20 U.S.C. 3223(c), 3231 (d)(1)(D), (f)(1))

§ 501.41 What additional requirements apply to programs of transitional bilingual education?

A grantee under the programs of transitional bilingual education shall comply with all additional requirements found in the definition of program of transitional bilingual education in section 703(a)(4)(B)–(D) of the Act and 34 CFR 500.4 regarding—

(a) The forty percent restriction on the participation of children whose language is English;

(b) The participation of LEP children in regular classes in courses such as art, music, and physical education;

(c) The requirement that the programs must be offered in the schools the children normally attend; and

(d) How the children must be grouped in graded and nongraded classrooms.

(20 U.S.C. 3223(a)(4)(B)–(D))

PART 505—[REMOVED]

3. Part 505 is removed.

PART 510—[REMOVED]

4. Part 510 is removed.

PART 514—[REMOVED]

5. Part 514 is removed.

6. Part 525 is revised to read as follows:

PART 525—BILINGUAL EDUCATION: FAMILY ENGLISH LITERACY PROGRAM

Subpart A—General

Sec.

525.1 Family English Literacy Program.
525.2 Who is eligible to apply for assistance under the Family English Literacy Program?
525.3 What regulations apply to the Family English Literacy Program?
525.4 What definitions apply to the Family English Literacy Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

525.10 What activities are eligible for assistance?

Subpart C—How Does One Apply for an Award?

525.20 What must an applicant include in its application for assistance?
525.21 What requirements pertain to the development of an evaluation plan?

Subpart D—How Does the Secretary Make an Award?

525.30 How does the Secretary evaluate an application?
525.31 What selection criteria does the Secretary use?
525.32 What additional factors does the Secretary consider in awarding grants?
525.33 What is the length of the project period?

Authority: Title VII of the elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221–3262), unless otherwise noted.

Subpart A—General

§ 525.1 Family English Literacy Program.

The Secretary provides assistance for projects under the Family English Literacy Program as defined in 34 CFR 500.4.

(20 U.S.C. 3223(a)(7))

§ 525.2 Who is eligible to apply for assistance under the Family English Literacy Program?

The following parties are eligible to apply for assistance under the Family English Literacy Program:

(a) Local educational agencies (LEAs).

(b) Institutions of higher education, including junior or community colleges.

(c) Private nonprofit organizations, applying separately or jointly.

(20 U.S.C. 3231(b)(1)(B))

§ 525.3 What regulations apply to the Family English Literacy Program?

The following regulations apply to the Family English Literacy Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 525.

(20 U.S.C. 3231(a)(5))

§ 525.4 What definitions apply to the Family English Literacy Program?

The definitions in 34 CFR 500.4 apply to this program.

(20 U.S.C. 3221(a)(5))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 525.10 What activities are eligible for assistance?

(a) The Secretary provides assistance for activities designed to establish, operate, and improve family English literacy programs such as—

(1) Instruction designed to help limited English proficient (LEP) adults and out-of-school youth achieve competence in the English language; and

(2) Instruction in methods by which parents and family members can facilitate the educational achievement of LEP children.

(b) Instruction under this program may be conducted exclusively in English or in English and the native language of the participants.

(20 U.S.C. 3223(a)(7))

Subpart C—How Does One Apply for an Award?

§ 525.20 What must an applicant include in its application for assistance?

An application for an award under this program must contain the information required under section 721(c)(2) of the Act and § § 525.21 and 525.32.

(20 U.S.C. 3231(a)(5))

§ 525.21 What requirements pertain to the development of an evaluation plan?

An applicant shall demonstrate in its application, that its plan for evaluating the progress and achievements of the proposed project meets the requirements of section 733 of the Act and 34 CFR 500.50–500.52.

(20 U.S.C. 3231(a)(5), 3243)

Subpart D—How Does the Secretary Make an Award?

§ 525.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 525.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses after the heading for the criterion.

(b) The Secretary then applies the additional factors listed in § 525.32.

(20 U.S.C. 3223 (a)(7), (h))

§ 525.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need and impact.* (25 points) The Secretary reviews each application to determine the extent to which—

(1) There is a need for the proposed family English literacy program;

(2) The methods used by the applicant to identify the needs are objective and quantifiable;

(3) The project proposes to develop the skills of LEP adults and out-of-school youth to achieve competence in English and to facilitate the educational achievement of LEP children; and

(4) The applicant gives preference for participation in the proposed project to parents and immediate family members of children enrolled in programs assisted under the Act.

(b) *Program objectives and design.* (30 points) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's design for meeting the needs of the persons to be served by the project and the likelihood that the project will meet those needs.

(c) *Commitment and capacity.* (20 points) The Secretary reviews each application to determine the applicant's commitment and capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(d) *Quality of personnel.* (7 points) (1) The Secretary reviews each application to determine the quality of the following personnel:

(i) The principal classroom instructional personnel.

(ii) The project director, if one is to be used, and other personnel essential to the success of the project.

(2) The Secretary considers—

(i) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(ii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications under paragraph (d)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures the proper and efficient administration of the project, including evidence that administrative costs are a minimum proportion of the total costs of the project.

(f) *Evaluation plan.* (8 points) The Secretary reviews the strength of the evaluation plan and its relationship to the educational goals of the project and the activities conducted to attain those goals.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(20 U.S.C. 3223(a)(7))

§ 525.32 What additional factors does the Secretary consider in awarding grants?

(a) The Secretary considers the following additional factors in awarding grants:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons.

(2) The need to provide assistance in proportion to the distribution of LEP children throughout the Nation, and within each of the States.

(3) The need for financial assistance to establish, operate, or improve programs for limited English proficient persons.

(4) The relative numbers of children from low-income families sought to be benefited by the program.

(b) The Secretary distributes an additional 15 points among the criteria listed in paragraph (a) of this section. The Secretary indicates how these 15 points are distributed in the application notice published in the **Federal Register**.

(20 U.S.C. 3231)

§ 525.33 What is the length of the project period?

The Secretary approves a project period of three years for an award under the Family English Literacy Program.

(20 U.S.C. 3231(d)(2))

7. Part 526 is revised to read as follows:

PART 526—BILINGUAL EDUCATION: SPECIAL POPULATIONS PROGRAM

Subpart A—General

Sec.

526.1 Special Populations Program.
526.2 Who is eligible to apply for assistance under the Special Populations Program?
526.3 What regulations apply to the Special Populations Program?
526.4 What definitions apply to the Special Populations Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

526.10 What types of projects may be funded?

Subpart C—How Does One Apply for an Award?

526.20 What requirements pertain to the development of an evaluation plan?

Subpart D—How Does the Secretary Make an Award?

526.30 What priorities may the Secretary establish?
526.31 How does the Secretary evaluate an application?
526.32 What selection criteria does the Secretary use?
526.33 What is the length of the project period?

Subpart E—What Conditions Must Be Met by a Recipient?

526.40 What information must be given to parents?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221–3262), unless otherwise noted.

Subpart A—General

§ 526.1 Special Populations Program.

The Special Populations Program provides assistance to preschool, special education, and gifted and talented programs which are—

(a) For limited English proficient (LEP) children; and

(b) Preparatory or supplementary to programs such as those assisted under the Act.

(20 U.S.C. 3231(a)(6))

§ 526.2 Who is eligible to apply for assistance under the Special Populations Program?

The following parties are eligible for assistance under the Special Populations Program:

(a) Local educational agencies (LEAs).

(b) Institutions of higher education, including junior or community colleges.

(c) Private nonprofit organizations.

(20 U.S.C. 3231(b)(1)(B))

§ 526.3 What regulations apply to the Special Populations Program?

The following regulations apply to the Special Populations Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 526.

(20 U.S.C. 3223(a)(6))

§ 526.4 What definitions apply to the Special Populations Program?

The following definitions apply to the Special Populations Program:

(a) The definitions in 34 CFR 500.4.

(b) The definitions implementing Part B of the Education of the Handicapped Act (EHA–B) for—

(1) "Handicapped children" in 34 CFR 300.5; and

(2) "Individualized education program" in 34 CFR 300.340.

(20 U.S.C. 3223(a)(6), 20 U.S.C. 1401–1420)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 526.10 What types of projects may be funded?

The Secretary provides assistance for activities that are preparatory or supplementary to programs, such as those assisted under the Act, designed to assist LEP students in achieving full competence in English. Special Populations projects may establish, operate, and improve—

(a) Preschool programs for LEP children who have not reached elementary school age;

(b) Programs for LEP children who receive services in accordance with the EHA–B and which are supplementary to the services required by the EHA–B; and

(c) Programs for LEP children who by reason of outstanding abilities are capable of high performance.

(20 U.S.C. 3231(a)(6))

Subpart C—How Does One Apply for an Award?

§ 526.20 What requirements pertain to the development of an evaluation plan?

An applicant shall demonstrate in its application that its plan for evaluating the progress and achievements of the proposed project meets the requirements of section 733 of the Act and 34 CFR 500.50–500.52.

(20 U.S.C. 3231(a)(6), 3243)

Subpart D—How Does the Secretary Make an Award?

§ 526.30 What priorities may the Secretary establish?

(a) In any fiscal year, the Secretary may establish as priorities, one or more of the activities listed in § 526.10.

(b) The Secretary announces any priorities in a notice published in the **Federal Register.**

(20 U.S.C. 3231(a)(6))

§ 526.31 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 526.32.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(b) The Secretary then applies the additional factors listed in 34 CFR 525.32.

(20 U.S.C. 3231(a)(6))

§ 526.32 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (25 points) the Secretary reviews each application to determine—

(1) The extent of the needs of the special populations to be served including the lack of proficiency of the LEP children in understanding, speaking, and, if appropriate, reading and writing in the English language;

(2) The reliability and objectivity of the means used to identify those needs, including—

(i) The criteria and other objective means used to identify the LEP children eligible to participate in the project; and

(ii) If applicable, the basis for differentiating between children whose language problems relate to limited English proficiency and those whose language problems relate to the child's handicap as identified in his or her individualized education program developed in accordance with EHA–B, and 34 CFR Part 300; and

(3) The extent to which the project will serve those most in need of services.

(b) *Program objectives and design.* (30 points) (1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's design for meeting the needs of LEP students to be served, including the extent to which the instructional approach to be used will address the specific needs identified in the application.

(2) The Secretary looks for the extent to which the project has specific and quantifiable objectives that will lead to the realization of the goals of the Act, including—

(i) The manner and time schedule by which the applicant will meet the needs of LEP children served by the project, including—

(A) The achievement of goals set for the children served by the project, especially the goal of achieving English language proficiency as soon as possible;

(B) The identification of children who have achieved proficiency in the English language adequate for their effective participation in the regular educational program;

(C) The transfer of these children identified in paragraph (b)(2)(i)(B) of this section to the regular educational program as soon as possible;

(ii) The strategies for coordination with established instructional programs at the elementary and secondary level for LEP children in the schools operated or supported by LEAs in the community or communities to be served; and

(iii) The way the applicant plans to use its resources and personnel to achieve each objective.

(3) The Secretary reviews each application to determine the quality of the training plan for the project, including the extent to which the plan addresses the needs of personnel to be trained to meet the needs of LEP children to be taught by the personnel.

(c) *Commitment and capacity.* (20 points) The Secretary reviews each application to determine the applicant's commitment and capacity to continue, expand, and build upon the project when Federal assistance ends.

(d) *Evaluation plan.* (8 points) The Secretary reviews the strength of the evaluation plan and its relationship to the educational goals of the project and the activities conducted to attain those goals.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(20 U.S.C. 3231(a)(6), 3243)

(e) *Quality of personnel.* (7 points) (1) The Secretary reviews each application to determine the quality of the following personnel:

(i) The principal classroom instructional personnel.

(ii) The project director, if one is to be used, and other personnel essential to the success of the project.

(2) The Secretary considers—

(i) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(ii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures the proper and efficient administration of the project, including evidence that administrative costs are a minimum proportion of the total costs of the project.

(20 U.S.C. 3231(a)(6), 20 U.S.C. 1401–1402)

§ 526.33 What is the length of the project period?

The Secretary approves a project period of one to three years.

(20 U.S.C. 3231(d)(3))

Subpart E—What Conditions Must Be Met by a Recipient?

§ 526.40 What information must be given to parents?

A grantee shall inform parents or legal guardians of students identified for enrollment in the project of the information specified in 34 CFR 501.40.

(20 U.S.C. 3223(c), 3231(d)(1)(D))

PART 527—[REMOVED]

8. Part 527 is removed.

9. A new Part 537 is added to read as follows:

PART 537—BILINGUAL EDUCATION: PROGRAM FOR THE DEVELOPMENT OF INSTRUCTIONAL MATERIALS

Subpart A—General

Sec.

537.1 Program for the Development of Instructional Materials.
537.2 Who is eligible to apply for assistance under the Program for the Development of Instructional Materials?
537.3 What regulations apply to the Program for the Development of Instructional Materials?
537.4 What definitions apply to the Program for the Development of Instructional Materials?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

537.10 What activities are eligible for assistance?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

537.30 How does the Secretary evaluate an application?
537.31 What selection criteria does the Secretary use?
537.32 What is the length of a project period?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98–511, 98 Stat. 2370 (20 U.S.C. 3221–3262), unless otherwise noted.

Subpart A—General

§ 537.1 Program for the Development of Instructional Materials.

The Program for the Development of Instructional Materials provides assistance to establish, operate, and improve programs for the development of instructional materials in languages for which materials are commercially unavailable. These instructional materials must meet the needs of local educational agencies that offer instructional programs such as those authorized under Part A of the Act.

(20 U.S.C. 3231(a)(7))

§ 537.2 Who is eligible to apply for assistance under the Program for the Development of Instructional Materials?

The following parties are eligible to apply under the part:

(a) State educational agencies (SEAs).

(b) Local educational agencies (LEAs)

(c) Institutions of higher education (IHEs).

(d) Private and public profit and nonprofit organizations.

(e) Individuals.

(20 U.S.C. 3231(a)(7))

§ 537.3 What regulations apply to the Program for the Development of Instructional Materials?

The following regulations apply to this program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 537.

(20 U.S.C. 3231(a)(7))

§ 537.4 What definitions apply to the Program for the Development of Instructional Materials?

The definitions in 34 CFR 500.4 apply to this program.

(20 U.S.C. 3231(a)(7))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 537.10 What activities are eligible for assistance?

The Secretary provides assistance to develop instructional materials including testing materials for use in programs for limited English proficient persons.

(20 U.S.C. 3231(a)(7))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 537.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 537.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for the complete criterion is indicated in parentheses after the heading for the criterion.

(b) The Secretary then applies the additional factors listed in 34 CFR 525.32.

(20 U.S.C. 3231(a)(7))

§ 537.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (35 points) The Secretary reviews each application to determine the extent of the need for the materials, including—

(1) The method used to identify the need;

(2) The nature and magnitude of the need; and

(3) How the applicant determined that the materials are not commercially available.

(b) *Program objectives and design.* (35 points)

(1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's design for meeting the need identified in the application, including how the instructional materials to be developed will meet that need.

(2) The Secretary looks for the extent to which the objectives of the project will lead to the realization of the goals of the Act, including—

(i) The goal of enabling LEP children to achieve English language proficiency;

(ii) The time schedule established to develop and test the instructional materials fully; and

(iii) The manner in which the applicant provides for the inclusion of staff of one or more LEAs in the development and testing of the instructional materials.

(c) *Quality of key personnel and applicant.* (10 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine personnel qualifications under paragraph (c)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(3) The Secretary also considers the applicant's experience in developing instructional materials.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures the proper and efficient administration of the project, including evidence that administrative costs are a minimum proportion of the total costs of the project.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(20 U.S.C. 3231(a)(7))

§ 537.32 What is the length of a project period?

The Secretary approves a project period of one to three years.

(20 U.S.C. 3231(d)(3))

10. A new Part 561 is added to read as follows:

PART 561—BILINGUAL EDUCATION: EDUCATIONAL PERSONNEL TRAINING PROGRAM

Subpart A—General

Sec.

561.1 Educational Personnel Training Program.
561.2 Who is eligible to apply for assistance under the Educational Personnel Training Program?
561.3 What regulations apply to the Educational Personnel Training Program?
561.4 What definitions apply to the Educational Personnel Training Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

561.10 What activities are eligible for assistance?

Subpart C—How Does One Apply for an Award?

561.20 What requirements pertain to the application advisory council and advisory committee?

Subpart D—How Does the Secretary Make an Award?

561.30 How does the Secretary evaluate an application?
561.31 What selection criteria does the Secretary use?
561.32 What additional factors does the Secretary consider?

Subpart E—What Conditions Must be Met by a Recipient?

561.40 What additional requirement applies to programs that include preservice training?
561.41 What financial assistance to participants is allowable under this program?

Authority: Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General

§ 561.1 Educational Personnel Training Program.

The Educational Personnel Training Program provides financial assistance to meet the needs for additional or better trained educational personnel (as defined in 34 CFR 500.4), for programs for limited English proficient persons. These projects may provide training for parents and may also provide

educational personnel with opportunities for career development, advancement, and lateral mobility.

(20 U.S.C. 3251(a)(1))

§ 561.2 Who is eligible to apply for assistance under the Educational Personnel Training Program?

Institutions of higher education are eligible to apply for assistance under the Educational Personnel Training Program.

(20 U.S.C. 3251(a)(1))

§ 561.3 What regulations apply to the Educational Personnel Training Program?

The following regulations apply to the Educational Personnel Training Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 561.

(20 U.S.C. 3251(a)(1))

§ 561.4 What definitions apply to the Educational Personnel Training Program?

The following definitions apply to the Educational Personnel Training Program:

(a) The definitions in 34 CFR 500.4.

(b) "Preservice training" means training for educational personnel preparing to participate in programs for limited English proficient persons.

(20 U.S.C. 3251(a)(1))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 561.10 What activities are eligible for assistance?

The Secretary provides assistance under this program for projects that provide training necessary to prepare educational personnel and parents to meet the ongoing needs of the limited English proficient (LEP) children that they will be serving. Assistance may be provided to degree and non-degree programs.

(20 U.S.C. 3251(a)(1))

Subpart C—How Does One Apply for an Award?

§ 561.20 What requirements pertain to the application advisory council and advisory committee?

An applicant for an award under this program shall—

(a) Develop its application in consultation with an advisory council of which a majority must be parents and other representatives of LEP children needing instruction from personnel with training similar to that provided in the project;

(b) Include in its application documentation of consultation with the council and the comments which the council makes on the application; and

(c) Assure in its application that it will provide for continued consultation with, and participation by, an advisory committee of parents, teachers, and other interested individuals that is selected by and predominantly composed of parents of LEP children needing instruction from personnel with training similar to that provided.

(20 U.S.C. 3231(e), 3251(b)(3)(c))

Subpart D—How Does the Secretary Make an Award?

§ 561.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 561.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(b) The Secretary then applies the additional factors in § 561.32.

(20 U.S.C. 3251(a)(1))

§ 561.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Need and impact.* (30 points) The Secretary reviews each application to determine—

(1) The extent to which the applicant has specifically identified needs to be addressed by the project for additional or better trained educational personnel to serve LEP students in the community, geographical region, or Nation; and

(2) The extent to which the methods used by the applicant to identify those needs are reliable and objective.

(b) *Program objectives and design.* (30 points) (1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's proposal for meeting the needs identified in its application, including—

(i) The extent to which those needs will be met by the project;

(ii) How rapidly those needs will be met by the project;

(iii) The appropriateness of the curriculum for meeting those needs; and

(iv) The extent and quality of practice teaching or other clinical experience—

(A) In the geographic area(s) where those needs have been identified; and

(B) In the substantive subject(s) for which the project will train personnel.

(2) The Secretary considers the extent to which a project designed to include preservice training contains coursework in—

(i) Teaching English as a second language;

(ii) Use of a non-English language for instructional purposes;

(iii) Linguistics;

(iv) Evaluation and assessment; and

(v) Involvement of parents in the educational process.

(3) The Secretary considers how well the specific project objectives will realize the goals of the Act. The Secretary considers the extent to which—

(i) The training objectives are—

(A) Clear and specific;

(B) Measurable; and

(C) Attainable within the proposed timeframe;

(ii) The training design is appropriate for the proposed objectives and participants;

(iii) The project will prepare teachers to teach English to LEP students;

(iv) The applicant proposes to use its resources and personnel to achieve each objective; and

(v) The project will provide opportunities for career development, advancement, and lateral mobility for participants in order to meet the changing needs of the LEP population to be served.

(20 U.S.C. 3254(a), 3251(d))

(c) *Coordination.* (10 points) (1) The Secretary reviews each application to determine the applicant's plans to coordinate project activities with related projects, including other activities funded under the Act.

(2) The Secretary considers the extent to which the applicant will coordinate the project with—

(i) Other related degree and non-degree programs and course of study at the IHE; and

(ii) SEAs, LEAs, and IHEs in—

(A) The geographic area(s) in which there is a need for personnel; and

(B) The substantive subject(s) for which the project will train personnel.

(3) The Secretary also considers whether the project will complement and not duplicate other activities funded under the Act.

(d) *Commitment and capacity.* (10 points) The Secretary reviews each application to determine the applicant's commitment to the project and capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(e) *Quality of key personnel.* (7 points) (1) The Secretary reviews each

application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures proper and efficient administration of the project including evidence that administrative costs are a minimum proportion of the project's total costs.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable, including—

(i) Data on numbers of participants;

(ii) Data on placement of participants;

(iii) Evidence of participants' success in serving LEP children in accordance with the needs identified in the application; and

(iv) Evidence that the project has developed the grantee's capacity as described in paragraph (d) of this section.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(20 U.S.C. 3251(a)(1), (d))

§ 561.32 What additional factors does the Secretary consider?

(a) In addition to the points awarded under § 561.31, the Secretary considers the following factors which demonstrate the applicant's competence and experience in programs and activities such as those authorized under the Act:

(1) Job placement and development.

(2) Evidence of prior participant's success in serving LEP children in accordance with the needs identified in the prior project.

(3) Evidence of demonstrated capacity and cost effectiveness as described in § 561.31(d) and (f).

(b) The Secretary distributes an additional 10 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the **Federal Register** how these 10 points are distributed.

(20 U.S.C. 3254)

Subpart E—What Conditions Must Be Met by a Recipient?

§ 561.40 What additional requirement applies to programs that include preservice training?

Programs that include preservice training must be designed to ensure that participants become proficient in English and a second language of instruction.

(20 U.S.C. 3251(d))

§ 561.41 What financial assistance to participants is allowable under this program?

(a) The Secretary may authorize a grantee to provide the following financial assistance to participants:

(1) Tuition and fees—the normal and usual costs associated with the course of study.

(2) Books—up to $250.

(3) Travel—up to $250 for travel related to practice teaching or clinical experience.

(4) Up to a maximum stipend of $325 per month, including allowances for subsistence and other expenses for a participant and his or her dependents, if the participant is—

(i) A full-time student in a program of study that was in the approved application; and

(ii) Gainfully employed no more than 20 hours a week or the annual equivalent of 1040 hours.

(b) In authorizing assistance to participants under paragraph (a) of this section, the Secretary considers the amount of other financial compensation that the participants receive during the training period.

(20 U.S.C. 3255)

11. A new Part 573 is added to read as follows:

PART 573—BILINGUAL EDUCATION: TRAINING DEVELOPMENT AND IMPROVEMENT PROGRAM

Subpart A—General

Sec.

573.1 Training Development and Improvement Program.
573.2 Who is eligible to apply for assistance under the Training Development and Improvement Program?
573.3 What regulations apply to the Training Development and Improvement Program?
573.4 What definitions apply to the Training Development and Improvement Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

573.10 What activities are eligible for assistance?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

573.30 How does the Secretary evaluate an application?
573.31 What selection criteria does the Secretary use?

Subpart E—[Reserved]

Authority: Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General

§ 573.1 Training Development and Improvement Program.

The Training Development and Improvement Program provides financial assistance to encourage reform, innovation, and improvement in higher education programs related to programs for limited English proficient persons.

(20 U.S.C. 3251(a)(3))

§ 573.2 Who is eligible to apply for assistance under the Training Development and Improvement Program?

Institutions of higher education (IHEs) are eligible to apply for assistance under the Training Development and Improvement Program.

(20 U.S.C. 3251(b)(1))

§ 573.3 What regulations apply to the Training Development and Improvement Program?

The following regulations apply to the Training Development and Improvement Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 573.

(20 U.S.C. 3251(a)(3))

§ 573.4 What definitions apply to the Training Development and Improvement Program?

The definitions in 34 CFR 500.4 apply to the Training Development and Improvement Program.

(20 U.S.C. 3251(a)(3))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 573.10 What activities are eligible for assistance?

The Secretary provides assistance for activities related to programs for limited English proficient persons which encourage reform, innovation, and improvement in—

(a) Applicable education curricula in graduate education;

(b) The structure of the academic profession; and

(c) The recruitment and retention of higher education and graduate school facilities.

(20 U.S.C. 3251(a)(3))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 573.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria listed in § 573.31.

(b) The Secretary awards a maximum of 100 points for all the criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(20 U.S.C. 3251(a)(3))

§ 573.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Need and impact.* (30 Points) (1) The Secretary reviews each application to determine—

(i) The extent to which there are specifically identified needs for the project; and

(ii) The extent to which the methods used by the applicant to identify those needs are reliable and objective.

(2) The Secretary also considers the extent to which—

(i) The project's objectives will assist in achieving the goals of the Act; and

(ii) The applicant proposes to use its resources and personnel to achieve each objective.

(b) *Program development and improvement.* (30 points) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's proposal for meeting the needs identified in the application including—

(1) The extent to which those needs will be met by the project;

(2) How rapidly those needs will be met;

(3) The courses, curriculum, or any applicable clinical training to be developed or revised; and

(4) The applicant's plan to recruit and retain qualified faculty members for the training program to be improved or reformed.

(c) *Coordination.* (10 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to coordinate project activities with related projects, including projects funded under the Act.

(2) The Secretary considers how the applicant will coordinate the project with—

(i) Other related programs and disciplines at the IHE; and

(ii) SEAs, LEAs, and IHEs in—

(A) The geographic area(s) in which there is a need for personnel; and

(B) The substantive subject(s) for which the project will train personnel.

(3) The Secretary also considers the extent to which the project will complement and not duplicate other activities funded under the Act.

(d) *Commitment and capacity.* (10 points) The Secretary reviews each application to determine—

(1) The applicant's commitment and capacity to continue, expand, and build upon the project when Federal assistance under this part ends; and

(2) The extent to which the applicant demonstrates competence and experience in programs and activities such as those authorized under the Act, particularly in training activities directly related to the objectives of the project.

(e) *Quality of key personnel.* (7 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine personnel qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures proper and efficient administration of the project, including evidence that administrative costs constitute a minimum proportion of the total costs of the project.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

Subpart E—[Reserved]

12. A new Part 574 is added to read as follows:

PART 574—BILINGUAL EDUCATION: SHORT-TERM TRAINING PROGRAM

Subpart A—General

Sec.

574.1 Short-Term Training Program.
574.2 Who is eligible to apply for assistance under the Short-Term Training Program?
574.3 What regulations apply to the Short-Term Training Program?
574.4 What definitions apply to the Short-Term Training Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

574.10 What activities are eligible for assistance?

Subpart C—How Does One Apply for an Award?

574.20 What requirements pertain to consultation?

Subpart D—How Does the Secretary Make an Award?

574.30 What priorities may the Secretary establish?
574.31 How does the Secretary evaluate an application?
574.32 What selection criteria does the Secretary use?
574.33 What additional factors does the Secretary consider?

Subpart E—What Conditions Must Be Met by a Recipient?

574.40 What financial assistance to participants is allowable under this program?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General

§ 574.1 Short-Term Training Program.

The Short-Term Training Program provides financial assistance to improve the skills of educational personnel and parents participating in programs for limited English proficient persons.

(20 U.S.C. 3251(a)(4))

§ 574.2 Who is eligible to apply for assistance under the Short-Term Training Program?

The following parties are eligible to apply for assistance under the Short-Term Training Program:

(a) Local educational agencies (LEAs).

(b) State educational agencies (SEAs).

(c) Institutions of higher education (IHEs), including junior or community colleges, and private for-profit or nonprofit organizations, which apply—

(1) After consultation with one or more LEAs or SEAs; or

(2) Jointly with one or more LEAs or SEAs.

(20 U.S.C. 3251(b)(2))

§ 574.3 What regulations apply to the Short-Term Training Program?

The following regulations apply to the Short-Term Training Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 574.

(20 U.S.C. 3251(a)(4))

§ 574.4 What definitions apply to the Short-Term Training Program?

The following definitions apply to the Short-Term Training Program:

(a) The definitions in 34 CFR 500.4.

(b) "Consultation" means engaging in discussions with appropriate persons representing entities to be served by the proposed project to determine needs, and providing opportunities for those persons to contribute to the development, operation, and evaluation of the proposed project.

(20 U.S.C. 3223, 3251(a)(4))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 574.10 What activities are eligible for assistance?

The Secretary provides assistance for the following activities:

(a) Training designed to improve the instructional competence of teachers in carrying out their responsibilities in programs for limited English proficient persons.

(b) Training designed to improve the skills of educational personnel other than teachers, in carrying out their responsibilities in programs for limited English proficient persons.

(c) Training designed to improve the skills of parents in carrying out their responsibilities in programs for limited English proficient persons.

(20 U.S.C. 3251(a)(4))

Subpart C—How Does One Apply for an Award?

§ 574.20 What requirements pertain to consultation?

An IHE or a private for-profit or nonprofit organization, which applies after consultation with one or more LEAs or SEAs, shall certify in its application that the consultation took place during the development of the proposed project and that the consulation will continue during the project period.

(20 U.S.C. 3251(b)(2))

Subpart D—How Does the Secretary Make an Award?

§ 574.30 What priorities may the Secretary establish?

(a) The Secretary may annually establish, as a priority, one or more of the activities listed in § 574.10.

(b) The Secretary announces any annual priorities in a notice published in the Federal Register.

(20 U.S.C. 3251(a)(4))

§ 574.31 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 574.32.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(b) The Secretary then applies the additional factors in § 574.33.

(20 U.S.C. 3241(a)(4))

§ 574.32 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Need.* (30 points) The Secretary reviews each application to determine—

(1) The extent to which there are specifically identified needs to be addressed by the project for the improvement of the skills of educational personnel and parents participating in programs for limited English proficient persons; and

(2) The extent to which the methods used by the applicant to identify those needs are reliable and objective.

(b) *Program objectives and design.* (30 points) (1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's proposal for meeting the needs identified in the application, including—

(i) The extent to which those needs will be met by the project;

(ii) How rapidly those needs will be met by the project; and

(iii) Whether an appropriate curriculum is proposed for meeting those needs.

(2) The Secretary also considers how well the specific project objectives will lead toward the realization of the goals of the Act, including consideration of the extent to which—

(i) The training objectives are—

(A) Clear and specific;

(B) Measurable; and

(C) Attainable within the proposed timeframe;

(ii) The training design is appropriate for the proposed objectives and participants;

(iii) The project is designed to train participants to teach English to LEP children; and

(iv) The applicant proposes to use its resources and personnel to achieve each objective.

(20 U.S.C. 3254(a), 3251(d))

(c) *Coordination.* (10 points) (1) The Secretary reviews each application to determine the applicant's plans to coordinate project activities with related projects, including other activities funded under the Act.

(2) The Secretary considers—

(i) How the applicant will coordinate the project with SEAs, Leas, and IHEs in—

(A) The geographic area(s) in which there is a need for personnel; and

(B) The substantive subject(s) for which the project will train personnel; and

(ii) The extent to which the project will complement and not duplicate other activities funded under the Act.

(d) *Commitment and capacity.* (10 points) The Secretary reviews each application to determine the applicant's commitment to the project and capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(e) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine personnel qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures proper and efficient administration of the project, including evidence that administrative costs constitute a minimum proportion of the total costs of the project.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective, and produce data that are quantifiable, including—

(i) Data on numbers of participants;

(ii) Evidence that participants' performance successfully addresses the needs identified in the application; and

(iii) Evidence that the project has developed the grantee's capacity as described in paragraph (d) of this section.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(20 U.S.C. 3251(a)(4))

§ 574.33 What additional factors does the Secretary consider?

(a) In addition to the points awarded under § 574.32, the Secretary considers the following factors which demonstrate the applicant's competence and experience in programs and activities such as those authorized under the Act:

(1) Evidence of prior participants' success in serving LEP children in accordance with needs identified in the prior project.

(2) Evidence of demonstrated capacity and cost effectiveness as provided in § 574.32(d) and (f).

(b) The Secretary distributes an additional 10 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the **Federal Register** how these 10 points are distributed.

(20 U.S.C. 3251(a)(4), 3254)

Subpart E—What Conditions Must Be Met by a Recipient?

§ 574.40 What financial assistance to participants is allowable under this program?

(a) The Secretary may authorize a grantee to provide the following financial assistance to participants:

(1) Up to $250 for travel directly related to the individual's participation in the short-term training.

(2) Up to $325 per month for costs including allowances for subsistence and other expenses for a participant and his or her dependents.

(b)(1) A grantee may provide financial assistance to an individual participating in short-term training only to the extent necessary to allow the individual to participate in the training.

(2) In authorizing assistance to participants under paragraph (a) of this section, the Secretary considers the amount of other financial compensation that the participants receive during the short-term training period.

(20 U.S.C. 3255)

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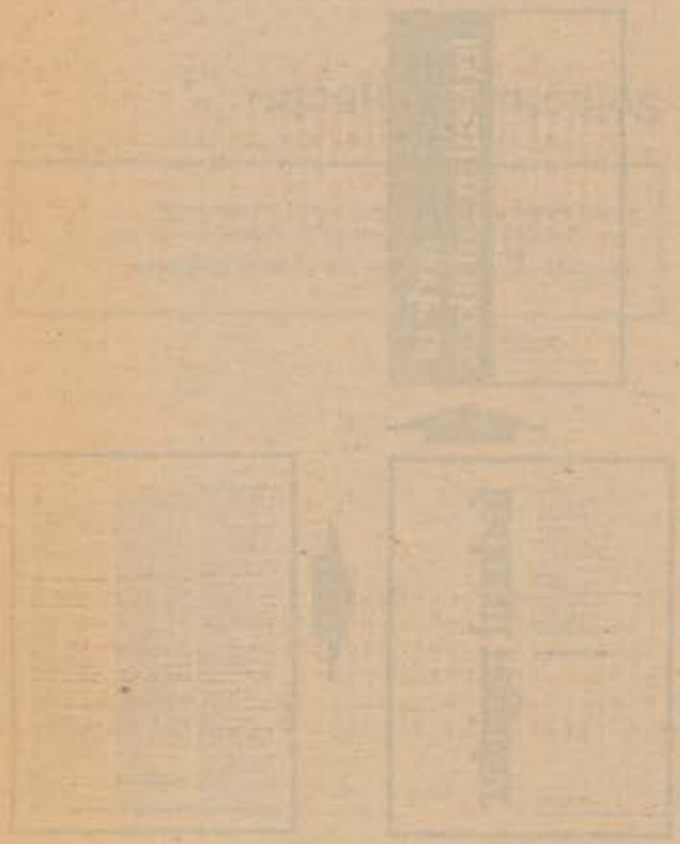

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