AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

12-6-85
Vol. 50 No. 235
Pages 49919-50156

Federal Register

Friday
December 6, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Philadelphia, PA and Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

Agricultural Commodities
Agriculture Department

Animal Diseases
Animal and Plant Health Inspection Service

Aviation Safety
Federal Aviation Administration

Child Support
Defense Department

Crop Insurance
Federal Crop Insurance Corporation

Disability Benefits
Social Security Administration

Disaster Assistance
Federal Emergency Management Agency

Endangered and Threatened Species
Fish and Wildlife Service

Fisheries
National Oceanic and Atmospheric Administration

Flood Insurance
Federal Emergency Management Agency

Hazardous Waste
Environmental Protection Agency

Immigration
Immigration and Naturalization Service

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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

Selected Subjects

Nutrition
Food and Nutrition Service

Old-Age, Survivors and Disability Insurance
Social Security Administration

Savings and Loan Associations
Federal Home Loan Bank Board

Surface Mining
Surface Mining Reclamation and Enforcement Office

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

PHILADELPHIA, PA

WHEN: Dec. 17; at 1 pm.
Dec. 18; at 9 am. (identical session)

WHERE: Room 3306/10,
William J. Green, Jr., Federal Building,
600 Arch Street, Philadelphia, PA.

RESERVATIONS: Laura Lewis,
Philadelphia Federal Information Center,
215-597-1709

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227
Melanie Williams 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the Washington, DC briefing.

Contents

Federal Register
Vol. 50, No. 235
Friday, December 6, 1985

Agriculture Department
See also Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation; Food and Nutrition Service; Foreign Agricultural Service.
RULES
Import quota and fees:
49919 Sugar; allocations

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
49922 Tuberculosis; State and area designations
PROPOSED RULES
Interstate transportation of animals and animal products (quarantine):
49937 Paratuberculosis; comment period reopened

Blind and Other Severely Handicapped, Committee for Purchase From
NOTICES
49983 Procurement list, 1986; additions and deletions

Civil Rights Commission
NOTICES
50036 Meetings; Sunshine Act

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration; Patent and Trademark Office.

Customs Service
NOTICES
50032 Warehouse facilities; proprietors fees

Defense Department
RULES
49927 Child and spousal support allotments, involuntary; interim
Personnel:
49930 State tax withholding from retired pay of Uniformed Service members; correction
NOTICES
Federal Acquisition Regulation (FAR):
50013 Agency information collection activities under OMB review
Meetings:
49983 Science Board Task Force on Software; date change

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation petitions:
49986 Development Associates, Inc.
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
49987 Boston Edison Co.
Remedial orders:
49988 Concord Petroleum Corp. et al.
49988 Phoenix Petroleum Co. et al.
49988 Southwestern Gulf Petroleum Co. et al.

Education Department
NOTICES
Meetings:
49983 Education Intergovernmental Advisory Council

Employment Standards Administration
NOTICES
50110 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, supersedeas decisions (AZ, AR, CT, FL, IL, IA, MA, NY, OK, PA, RI, TX, UT, and WA)
50116 Minimum wages for Federal and federally-assisted construction; general wage determination decisions; publication procedures

Endangered Species Committee
NOTICES
49983 Hearings, exemption applications, etc.

Energy Department
See also Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration.
NOTICES
Atomic energy agreements; subsequent arrangements:
49985 European Atomic Energy Community
49985 Spain

Energy Research Office
NOTICES
Meetings:
49995 Health and Environmental Research Advisory Committee

Environmental Protection Agency
PROPOSED RULES
Hazardous waste program authorizations:
49947 Oregon
49949 Washington
NOTICES
Environmental statements; availability, etc.:
50007 Agency statements; comment availability
50007 Agency statements; weekly receipts
Toxic and hazardous substances control:
50004, 50006 Premanufacture notices receipts (2 documents)

Farm Credit Administration
NOTICES
50008 Federal land bank associations consolidation; proposed charter
50008 Production credit associations consolidation; proposed charter

Federal Aviation Administration
RULES
Airworthiness directives:
49923 Boeing
PROPOSED RULES
Airworthiness directives:
49944 Boeing

49945 Gates Learjet

Federal Communications Commission
RULES
Common carrier services:
49930 Terminal equipment connection to telephone network, equipment registration program; application processing procedures and removal of obsolete provisions; correction

Federal Crop Insurance Corporation
RULES
Crop insurance; various commodities:
49920 Peas; interim

Federal Deposit Insurance Corporation
NOTICES
50036 Meetings; Sunshine Act

Federal Emergency Management Agency
PROPOSED RULES
Disaster assistance:
49959 Temporary housing assistance
Flood elevation determinations:
49951 Arkansas et al.
NOTICES
Disaster and emergency areas:
50009 Louisiana
50009 Pennsylvania
50009 Virginia
50009 West Virginia

Federal Energy Regulatory Commission
RULES
Public Utility Regulatory Policies Act etc.:
49924 Electric utilities, cogeneration, and small power producers; fees for benefits and services; rehearing
NOTICES
Hearings, etc.:
49989 Williston Basin Interstate Pipeline Co.
49989 Hydroelectric applications

Federal Home Loan Bank Board
PROPOSED RULES
Federal Savings and Loan Insurance Corporation:
49940 Repurchase agreements and reverse-repurchase agreements
Federal savings and loan system:
49937 Interstate branching within District of Columbia, Maryland, and Virginia Region
NOTICES
Applications, etc.:
50010 American Savings Bank, FSB (2 documents)
50010 Brookfield Federal Savings & Loan Association
50010 Capital Federal Savings & Loan Association
50010 Century Federal Savings & Loan Association
50010 Coast Savings & Loan Association
50011 Conservative Savings & Loan Association
50011 Downey Saving & Loan Association
50011 First Federal Savings & Loan Assocation of Danville, VA
50011 First Federal Savings & Loan Association of DeKalb County
50011 Heart Federal Savings & Loan Association
50011 Home Bank, FSB
50012 Metropolitan Federal Savings & Loan Association
50012 Mid-America Federal Savings & Loan Association
50012 North American Savings Association
50012 Palemetto Federal Savings & Loan Association
50012 Piedmont Federal Savings & Loan Association
50012 Poughkeepsie Savings Bank, FSB
50013 Security Federal Savings & Loan Association of South Miami, FL

Federal Home Loan Mortgage Corporation
NOTICES
50036 Meetings; Sunshine Act

Federal Maritime Commission
NOTICES
Meetings:
50013 Automated Tariff Filing and Information System Advisory Committee

Federal Mine Safety and Health Review Commission
NOTICES
50036 Meetings; Sunshine Act

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
50033 Iowa National Mutual Insurance Co.
50033 National-Ben Franklin Insurance Co. of Michigan et al.

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
49970 Alabama leather flower
49967 Prairie bush-clover

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
49924 ESSAR Corp.; sponsor name change; correction
PROPOSED RULES
Drug labeling:
49947 Sulfiting agents; warning statement; correction
NOTICES
Human drugs:
50014 Regulatory review period determination; fortaz
50014 Regulatory review period determination; hexabriz injection
Medical devices; premarket approval:
50015 Hydracon Corp.; correction

Food and Nutrition Service
PROPOSED RULES
Child nutrition programs:
49933 Meat alternates used in programs

Foreign Agricultural Service
NOTICES
Import quotas and fees:
49973 Chocolate crumb from Australia; country or origin quota adjustment

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
50013 Agency information collection activities under OMB review

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; National Institutes of Health; Social Security Administration.

Health Care Financing Administration
RULES
Medicare:
49930 Hospital inpatient services, prospective payments (Diagnosis Related Groups); effective date postponement

Hearing and Appeals Office, Energy Department
NOTICES
Applications for exception:
49995 Decisions and orders
49997, 50000 Special refund procedures; implementation and inquiry (2 documents)

Housing and Urban Development Department
NOTICES
50016 Agency information collection activities under OMB review

Immigration and Naturalization Service
RULES
Immigration:
49921 Returning resident immigrants; waivers, etc.; employees of American University of Beirut

Interior Department
See Fish and Wildlife Service; Surface Mining Reclamation and Enforcement Office.

International Trade Administration
NOTICES
Antidumping:
49973 Low-fuming brazing copper rod and wire from South Africa
49976 Nylon impression fabric from Japan
Countervailing duties:
49977 Oil country tubular goods from Taiwan

Interstate Commerce Commission
NOTICES
Motor carriers:
50016 Agricultural cooperative transportation; filing notices
50017 Compensated intercorporate hauling operations; intent to engage in
Railroad operation, acquisition, construction, etc.:
50017 Consolidated Rail Corp. et al.
Railroad services abandonment:
50016 Burlington Northern Railroad Co.
50017 Dayton & Michigan Railroad Co. et al.

Justice Department
See also Immigration and Naturalization Service.
NOTICES
Meetings:
50018 Attorney General's Commission on Pornography
Pollution control; consent judgment:
50018 Hooker Chemicals & Plastics Corp. et al.

Labor Department
See also Employment Standards Administration; Occupational Safety and Health Administration.
NOTICES
50019 Agency information collection activities under OMB review

Management and Budget Office
NOTICES
50027 Audit requirements for State and local governments (Circular A-128)

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
50013 Agency information collection activities under OMB review

National Highway Traffic Safety Administration
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
50031 Williams, William B.
Motor vehicle safety standards; exemption petitions, etc.:
50031 Marlin Drikow

National Institutes of Health
NOTICES
Meetings:
50015 Recombinant DNA Advisory Committee

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
49931 Atlantic surf clam and ocean quahog
NOTICES
Permits:
50150 Foreign fishing

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
50020 Arizona Public Service Co. et al.
50023 Nuclear Fuel Services, Inc.
50025 Pennsylvania Power & Light Co.

Occupational Safety and Health Administration
NOTICES
State plans; standards approval, etc.:
50019 Indiana

Patent and Trademark Office
NOTICES
49980 Procurement contracts; exchange agreements guidelines

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
50027 Perry, SC

Small Business Administration
NOTICES
50027 Agency information collection activities under OMB review
Applications, etc.:
50028 Ameriway Venture Partners I
50029 NatWest USA Capital Corp.
50029 Princeton Finance Co.
50029 VK Capital Co.

Disaster loan areas:
50028 Puerto Rico
49928 Virginia
49928 West Virginia

Social Security Administration
RULES
Social security benefits:
50068 Disability determinations; medical criteria
Social security benefits and supplemental security income:
50118 Disability and blindness determinations

State Department
NOTICES
Meetings:
50030 Shipping Coordinating Committee

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission:
49924 Colorado
49925 Iowa

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
49982 Korea

Trade Representative, Office of United States
NOTICES
Committees; establishment, renewals, terminations, etc.:
50027 Investment Policy Advisory Committee

Transportation Department
See also Federal Aviation Administration; National Highway Traffic Safety Administration.
RULES
49930 Audit requirements for State and local governments; final rule and request for comments; correction
NOTICES
Aviation proceedings:
50031 Agreements filed; weekly receipts
50030 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications

Treasury Department
See Customs Service; Fiscal Service.

United States Information Agency
NOTICES
Meetings:
50033 Public Diplomacy, U.S. Advisory Commission

Veterans Administration
NOTICES
50033 Privacy Act; systems of records

Western Area Power Administration
NOTICES
Power rate adjustments:
50002 Pick-Sloan Missouri Basin Program

Separate Parts in This Issue

Part II
50068 Department of Health and Human Services, Social Security Administration

Part III
50110 Department of Labor, Employment Standards Administration, Wage and Hour Division

Part IV
50118 Department of Health and Human Services, Social Security Administration

Part V
50150 Department of Commerce, National Oceanic and Atmospheric Administration

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

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
6 49919
416 49920
Proposed Rules:
210 49933
225 49933
226 49933

8 CFR
211 49921

9 CFR
77 49922
Proposed Rules:
71 49937
80 49937

12 CFR
Proposed Rules:
556 49937
571 49940

14 CFR
39 49923
Proposed Rules:
39 (2 documents) 49944, 49945

18 CFR
32 49924
33 49924
34 49924
35 49924
36 49924
45 49924
101 49924
292 49924
375 49924
381 49924

20 CFR
404 (2 documents) 50068, 50118
416 50118

21 CFR
555 49924
Proposed Rules:
201 49947

30 CFR
906 49924
915 49925

32 CFR
54 49927
78 49930

40 CFR
Proposed Rules:
271 (2 documents) 49947, 49949

42 CFR
412 49930

44 CFR
Proposed Rules:
67 49951
205 49959

47 CFR
68 49930

49 CFR
90 49930

50 CFR
652 49931
Proposed Rules:
17 (2 documents) 49967, 49970

Rules and Regulations

Federal Register
Vol. 50, No. 235
Friday, December 6, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

7 CFR Part 6

Regulations Governing Allocations of Sugar Import Quotas; Other Specified Countries or Areas

AGENCY: Office of the Secretary, U.S. Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule finalizes the allocation provisions governing sugar import quotas for those countries or areas which are designated as "Other Specified Countries or Areas" (more commonly known as the "basket category") with a modification. This rule modifies the maximum quota allocated to each basket country. Each country in the basket category will receive an annual quota equal to its pro rata share of the percentage quota for the basket, or 12,500 short tons, whichever is greater.

EFFECTIVE DATE: December 6, 1985.

FOR FURTHER INFORMATION CONTACT: Carol Brick-Turin, Agricultural Economist, Sugar Group, Foreign Agricultural Service, Department of Agriculture, 12th & Independence Avenue SW., Washington, DC 20250, Telephone: (202) 447–6939.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 4941 of May 5, 1982 (47 FR 19661) established a country-by-country quota system for the importation of sugar into the United States. Under the import quota allocation provisions established under the Proclamation, each country was allocated a specific percentage allocation of the quota if that allocation was one percent or greater. The remaining countries were classified as "Other Specified Countries or Areas" (more commonly known as the "basket category"). Their percentage allocations were pooled and they competed on a first-come-first-serve basis for the entire pool. These terms were modified in an interim rule (7 CFR 6.90–6.93) which provided that each country in the basket category would have a specific annual quota. Under that interim rule, each country receives a quota allocation equal to its pro rata share of the percentage allocation for the basket, or 16,500 short tons, whichever is greater. No comments were received on the interim rule. Therefore the interim rule is adopted with a modification.

The maximum level allocated to individual basket countries is modified. Each country will receive a quota allocation equal to its pro rata share of the percentage allocation for the basket, or 12,500 short tons, whichever is greater.

After consultation with the United States Trade Representative, the Department of State and the Department of the Treasury, I have determined that this rule is necessary and appropriate to provide countries in the basket category with reasonable access to the U.S. sugar market. It has also been determined that these provisions are necessary and appropriate to carry out U.S. obligations under the General Agreement on Tariffs and Trade.

This rule also amends the existing regulations (7 CFR 6.90–6.93) to reflect the expiration of the International Sugar Agreement, 1977, Implementing Act (7 U.S.C. 3601 *et seq.*).

This rule involves a foreign affairs function of the United States. Accordingly, the provisions of 5 U.S.C. 553 do not apply and no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since the rule does not have any of the effects specified in those documents.

An assessment of the impact on the environment of this proposed rule has been completed. It has been determined that this action will have no foreseeable significant effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this proposed rule. An environmental assessment is available for review in Room 6091, South Building, USDA, during normal business hours.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Foreign trade, Imports, Quotas, Sugar.

PART 6—[AMENDED]

Accordingly, 7 CFR Part 6 is amended as follows:

1. The authority citation for Subpart—Sugar Import Quotas (§§ 6.90–6.93) is revised to read as follows:

Authority: Sec. 201, Trade Expansion Act of 1962 (19 U.S.C. 1821); Presidential Proclamation 4941, May 5, 1982 (47 FR 19661); Headnotes 2 and 3, Subpart A, Part 10, Schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202).

2. Section 6.90 is amended by revising the last sentence with the following:

§ 6.90 General statement.

* * * It has further been determined that these regulations give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

3. Section 6.91 is amended by revising paragraph (a)(2) to read as follows:

§ 6.91 Allocation of individual import quotas.

(a) * * *

(2) 12,500 short tons, raw value.

* * * * *

Signed at Washington, DC, on December 3, 1985.

John R. Block,
Secretary of Agriculture.

[FR Doc. 85–28953 Filed 12–5–85; 8:45 am]
BILLING CODE 3410–10–M

Federal Crop Insurance Corporation

7 CFR Part 416

[Amdt. No. 1; Doc. No. 2892S]

Pea Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to amend the Pea Crop Insurance Regulations (7 CFR Part 416), effective for the 1986 and succeeding crop years. The intended effect of the proposal is to clarify that FCIC will not insure against loss of production when green peas are not timely harvested by the processor because of unusual weather conditions resulting in a substantial amount of peas being ready for harvest at the same time. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES:

Effective date: December 31, 1985.

Comment date: Written comments, data, and opinions on this interim rule must be submitted not later than February 4, 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, elephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

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

On Tuesday, February 26, 1985, FCIC published a final rule in the **Federal Register** at 50 FR 7728, revising and reissuing the Pea Crop Insurance Regulations (7 CFR Part 416), effective for the 1986 and succeeding crop years.

Section 1.b.(1) of the policy found at § 416.7(d) states that FCIC will not insure against any loss of production due to green peas not being timely harvested unless FCIC determines that, due to unusual weather conditions, a substantial amount of acres of green peas in the area are ready for harvest at the same time. In such a circumstance, FCIC may be liable for indemnity.

This provision creates the possibility of program abuse. A situation could occur where unusual weather conditions delayed harvest on one section at the same time the processor is ready to harvest, allowing that section to arrive at peak harvest at the same time as another section.

A strong possibility exists that some parties responsible for determining what acreags are to be harvested may be making that determination on the question of whether or not the producer is insured under this program. Some indemnities have been paid based solely on the fact that the peas were bypassed at harvest time by the processor. The decision to bypass was made solely on the quantity of peas available for harvest at the same time with no determination made of the basis for the glut. Section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) limits crop insurance to "unavoidable causes." Payment of indemnities to producers based on the decision of an interested party to bypass one area for harvest in favor of another is not an unavoidable cause intended to be covered by the program. The potential for abuse, not only by processors but also by competing insurance delivery systems is great and the benefits small.

The Corporation is therefore publishing this interim rule to delete the payment of indemnity for any peas which are lost because they were not harvested even though they were available for harvest.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which precludes notice and other public procedure because the current policy provision for insuring against bypass peas does not provide coverage on an actuarially sound basis. Therefore, in order to protect the integrity of the pea crop insurance program, it is necessary to amend the policy as quickly as possible to prevent further program abuse.

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

All written 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, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 416

Crop insurance, Peas.

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 Pea Crop Insurance Regulations (7 CFR Part 416), effective for the 1986 and succeeding crop years, in the following instances:

PART 416—[AMENDED]

1. The authority citation for 7 CFP. Part 416 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.)

2. Paragraph (d) of 416.7 is amended by revising 1.b. of the policy to read as follows:

§ 416.7 The application and policy.

* * * * *

(d) * * *

1. Causes of loss.

* * * * *

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

(1) Green peas not being timely harvested unless such delay in harvesting is solely and directly due to adverse weather conditions, (specifically, no indemnity will be paid if the delay in harvesting is in any way, caused by the non-availability of labor or equipment, by the volume of peas ready for harvest at approximately the same time, or by any other reason except adverse weather conditions);

* * * * *

Done in Washington, DC, on October 15, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-28920 Filed 12-5-85; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 211

Documentary Requirements; Immigrants; Waivers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule is intended to bring the Service into compliance with Private Law 98-53, passed May 29, 1984. This bill provides for the admission of aliens lawfully admitted for permanent residence who proceeded abroad, were employed by the American University of Beirut, and are seeking admission to the United States. These aliens will be admitted as special immigrants returning from a temporary visit abroad without being required to obtain Special Immigrant visas from an American consul abroad.

EFFECTIVE DATE: December 6, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3048

For Specific Information: Margaret M. Smitherman, Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3320.

SUPPLEMENTARY INFORMATION: Section 211(b) of the Immigration and Nationality Act is the basic statutory provision authorizing admission without presentation of immigrant visas by aliens previously admitted as immigrants who are returning to the United States after a temporary visit. Pursuant to this section and the related regulations, an alien who qualifies as a "returning resident immigrant" may be admitted in the absence of an immigrant visa. Under section 101(a)(27)(A), to which section 211(b) refers, a "returning resident immigrant" is defined as "an immigrant lawfully admitted for permanent residence, who is returning from a temporary visit abroad."

To make a determination whether an applicant qualifies for a finding that he or she is returning from a temporary visit, several factors must be taken into consideration. First, the duration of the absence has a definite bearing on whether it can be deemed "temporary." Second, the location of the applicant's ties, property holdings and jobs all relate to a determination regarding the character of a visit abroad. Finally, the intention of the applicant, with respect to both the location of his or her actual home and the length of his or her absence from the United States, have been deemed significant.

The American University of Beirut, in an effort to foster better relations between the United States and the Near East, employs persons who possess high academic degrees and are familiar with both Western and Eastern cultures. As a result, approximately 12% of the American University faculty is made up of lawful permanent residents of the United States, who were educated in this country and who accepted positions with the University. Problems arose when they sought to return to the United States. Their admissibility was challenged on the grounds that they were not returning to an unrelinquished domicile or from a temporary absence abroad, and they were deemed to have abandoned their residences. To remedy this situation, Private Law 98-53 was passed. This law permits aliens lawfully admitted for permanent residence who are employed by the American University of Beirut to return to the United States as special immigrants during or after completion of such employment, regardless of the duration of such employment.

The Service and the Department of State have concurred that an amendment to 8 CFR 211.1(b) would be in compliance with the new law and would enable members of this special group to return to the United States without obtaining a special immigrant visa, provided they are in possession of their alien registration receipt cards or boarding letters issued by a consular officer or immigration officer, and are not excludable from admission to the United States on some other ground.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this change is mandated by law.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, does not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 211

Immigrants, Waivers.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

1. The authority citation for Part 211 continues to read as follows:

Authority: Secs. 101 and 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1101 and 1103).

2. Section 211.1 is amended by adding a new paragraph (b)(4) to read as follows:

§ 211.1 Visas.

* * * * *

(b) * * *

(4) *Private Law 98-53.* A lawful permanent resident alien who immediately preceding travel to the United States was employed by the American University of Beirut, and seeks admission either to remain temporarily in the United States and then resume employment with the American University of Beirut, or to resume permanent residence in the United States may present Form I-151/551, Alien Registration Receipt Card, or a boarding letter issued by a United States consular or immigration officer in lieu of an immigrant visa.

* * * * *

Dated: November 26, 1985.

Richard E. Norton,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85-28976 Filed 12-5-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 85-117]

Tuberculosis in Cattle; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of tuberculosis by raising the designation of Arizona, Delaware, Indiana, Kansas, Massachusetts, Michigan, Nebraska, Nevada, New York, Oklahoma, Pennsylvania, South Carolina, South Dakota, Vermont, and the Virgin Islands of the United States from modified accredited areas to accredited-free States. It has been determined that these jurisdictions meet the criteria for designation as accredited-free States. This document also lowers the designation of North Carolina from an accredited-free State to a modified accredited area. It has been determined that North Carolina no longer meets the criteria for designation as an accredited-free State but meets the criteria for designation as a modified accredited area.

The regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from either accredited-free States or modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers prefer to buy cattle from accredited-free States.

EFFECTIVE DATE: January 6, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Cattle Diseases Staff, VS, APHIS, USDA, Room 818, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8715.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis in Cattle" regulations (contained in 9 CFR Part 77 and referred to below as the regulations) regulate the interstate movement of cattle because of tuberculosis. The requirements of the regulations concerning the interstate movement of cattle not known to be affected with or exposed to tuberculosis are based on whether the cattle are moved from jurisdictions designated as accredited-free States, modified accredited areas, or nonmodified accredited areas. The criteria for determining the status of States (the term State is defined to mean any State, territory, the District of Columbia, or Puerto Rico) or portions of States is contained in the document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations by incorporation by reference. Generally the status of States or portions of States is determined based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis control and eradication program.

A document published in the **Federal Register** on September 3, 1985 (50 FR 35564-35565), proposed to amend the regulations by raising the designation of Arizona, Delaware, Indiana, Kansas, Massachusetts, Michigan, Nebraska, Nevada, New York, Oklahoma, Pennsylvania, South Carolina, South Dakota, Vermont, and the Virgin Islands of the United States from modified accredited areas to accredited-free States. The document of September 3, 1985, also proposed to lower the designation of North Caroline from an accredited-free State to a modified accedited area.

Comments were solicited concerning the proposal for a 30-day period ending November 4, 1985. No comments were received. Based on the rationale set forth in the proposal, the regulations are amended as proposed.

Executive Order and Regulatory Flexibility Act

This action is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this action will not have a significant effect of the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. It has been determined that this action will not have a significant effect on marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant 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 3015, Subpart V).

List of Subjects in 9 CFR Part 77

Animal diseases, Cattle Transportation, Tuberculosis.

PART 77—TUBERCULOSIS IN CATTLE

Accordingly, 9 CFR Part 77 is amended as follows:

1. The authority citation for Part 77 is revised to read as set forth below:

Authority: 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 77.4, paragraph (b) is revised to read as follows:

§ 77.4, Accredited-free States.

* * * * *

(b) The following States are hereby designated accredited-free States: Arizona, Colorado, Connecticut, Delaware, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Wyoming, and the Virgin Islands of the United States.

Done at Washington, DC, this 2nd day of December 1985.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-29011 Filed 12-5-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-137-AD; Amdt. 39-5179]

Airworthiness Directives; Boeing Model 737-100, -200, and -300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) which requires installation of increased length escape slide pack release cable assemblies. This amendment is needed to correct a condition aggravated by that AD, and to require the installation of increased length escape slide pack release cable assemblies.

EFFECTIVE DATE: December 20, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207, or may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-2932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 85-19-04, Amendment 39-5141 (50 FR 38505; September 23, 1985), became effective October 15, 1985, with compliance required within 45 days. The AD required replacement of escape slide pack release cable assemblies on Boeing Model 737 airplanes in accordance with Boeing Service Bulletin 737-25A1182 to prevent premature release of the slide and blockage of the doorway. One operator discovered during accomplishment of the AD that the escape slide girt cutout can become entangled with the latch bracket mounted on the slide container. If this occurs, the door could become jammed, rendering it unusable in an evacuation. Based on this new information, the FAA suspended compliance with AD 85-19-04 on November 7, 1985.

Boeing Service Bulletin 737-25A1182, Revision 2, dated November 12, 1985, was issued to provide for modification of the latch bracket attachment, as well as installation of increased length escape slide pack release cable assemblies.

Since this condition is likely to exist or develop on other airplanes of this model, the FAA has determined that an AD is necessary which supersedes AD 85-19-04, to require replacement of escape slide pack release cable assemblies with assemblies using longer cables, and to require modification of the escape slide container in accordance with Boeing Service Bulletin 737-25A1182, Revision 2.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 30 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

2. By adding the following new airworthiness directive which supersedes AD 85-19-04, Amendment 39-5141 (50 FR 38505; September 23, 1985):

Boeing: Applies to Boeing Model 737-100, -200, and -300 airplanes certificated in any category. Compliance required within 45 days of the effective date of this amendment, unless already accomplished.

To ensure proper door opening and escape slide deployment, accomplish the following:

A. For airplanes which have accomplished AD 85-19-04, inspect escape slides and modify escape slide containers in accordance with Boeing Service Bulletin 737-25A1182, Revision 2, Part IV, dated November 12, 1985, or later FAA approved revisions.

B. For airplanes which have not accomplished AD 85-19-04, accomplish inspections, escape slide installation modifications, and functional tests, in accordance with Boeing Service Bulletin 737-25A1182, Revision 2, Parts I, III, and IV, dated November 12, 1985, or later FAA-approved revisions.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Upon request of an operator, an FAA Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the compliance times in this AD, if the request contains substantiating data to justify the increase for the operator.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received these documents form the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment supersedes Airworthiness Directive (AD) 85-19-04, Amendment 39-5141 (50 FR 38505; September 23, 1985).

This Amendment becomes effective December 20, 1985.

Issued in Seattle, Washington, on November 29, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-28924 Filed 12-5-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 32, 33, 34, 35, 36, 45, 101, 292, 375, and 381

[Docket No. RM82-38-000]

Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers

Issued November 25, 1985.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Order granting rehearing for purpose of further consideration.

SUMMARY: On September 30, 1985, the Federal Energy Regulatory Commission (Commission) issued a final rule establishing fees for the services and benefits it provides to electric utilities, cogenerators and small power producers under the Federal Power Act and the Public Utility Regulatory Policies Act.

In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration.

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas Moore, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8464.

SUPPLEMENTARY INFORMATION:

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

On September 30, 1985, the Federal Energy Regulatory Commission (Commission) issued a final rule amending its regulations to establish fees for services and benefits provided under the Federal Power Act and the Public Utility Regulatory Policies Act: Fees Applicable to Electric Utilities, Cogenerators and Small Power Producers, 50 FR 40347 (October 3, 1985).

The Commission has received nine variously styled pleadings in this rulemaking docket. In order to provide sufficient time to consider the issues raised in these pleadings, the Commission grants rehearing of its final rule for the limited purpose of further consideration. This action does not constitute a grant or denial of any request on its merits, either in whole or in part, nor does it stay the effect of the rule. As provided in § 385.713 of the Commission's Rules of Practice and Procedure (18 CFR 385.713), no answers to the requests for rehearing will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28942 Filed 12-5-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 555

Animal Drugs, Feeds, and Related Products; Change of Sponsor

Correction

In FR Doc. 85-28498 beginning on page 49372 in the issue of Monday, December 2, 1985, make the following correction on page 49373:

In the first column, under § 555.110a in the second line, "(c)(2)(iii)" should read "(c)(2)(ii)".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Removal of Condition of Approval of Colorado Permanent Program Under Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 906 by removing a condition of approval of the Colorado permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Colorado submitted material to OSM which satisfies the condition listed at 30 CFR 906.11(ss). The condition pertains to the adequacy of the State's inspection report form.

This final rule is being made effective immediately in order to expedite the State program amendment process and to encourage the State to conform its program to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: December 6, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program Submission

On February 29, 1980, OSM received a proposed regulatory program from the State of Colorado. On December 15, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 45 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the December 15, 1980, **Federal Register** (45 FR 82173-82214).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980 **Federal Register** (45 FR 82173-82214).

II. Submission of Program Amendment

Since the Secretary's approval of the Colorado program, it has been amended several times, removing all but seven conditions. By letter dated March 21, 1985, Colorado notified OSM that it had developed a new inspection report form to satisfy condition (ss) of the Secretary's approval of the Colorado program as listed under 30 CFR 906.11. By letter dated May 31, 1985, OSM requested that the State submit this form as a proposed program amendment. Colorado did so by letter of June 13, 1985, noting that the Mined Land Reclamation Board had approved the form on May 23, 1985 (OSM Administrative Record No. CO-237).

Condition (ss) stipulates that Colorado shall submit to the Secretary program provisions which clarify State rule 5.02.2(4) to be consistent with 30 CFR 840.11(d)(3) [since recodified as 30 CFR 840.11(f)(3)] to require that inspection reports be adequate to enforce the requirements of and carry out the terms and purposes of the State program, or otherwise amend its program to accomplish the same results. In its letter to OSM dated March 21, 1985, Colorado explained that a regulation change was unnecessary because the State's inspection report form had been revised to adequately enforce the requirements of the State program.

III. Public Comment

On September 25, 1985, OSM invited public comment on the adequacy of the revised inspection report form in satisfying condition (ss) (50 FR 38861). No comments were submitted to OSM.

IV. Secretary's Findings and Decision

After thoroughly reviewing the revised inspection form submitted by the State, OSM has determined that it is adequate to enforce the requirements of the State program. It provides for a detailed listing of the performance standards covered during an inspection, a description of site conditions and any violations observed, an explanation of enforcement actions taken during the inspection and of the facts or evidence supporting the enforcement action.

Language contained in the inspection form previously used by the State suggesting that the form was being used to "warn" operators about violations has been excluded from the new form. The approved Colorado program does not provide authority for inspectors to issue warnings in lieu of issuing notices or orders for observed violations.

Because OSM has determined that Colorado's revised inspection report is adequate to enforce the requirements of the State program, the Secretary is removing the condition of approval of the State program listed at 30 CFR 906.11(ss). Also, he is approving the inspection report form submitted by the State on June 13, 1985, and an amendment to the Colorado program. Any revisions to the form which Colorado may wish to make at a future time must be approved through the amendment process set forth at 30 CFR 732.17.

V. Additional Determinations

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

2. *Compliance with the Regulatory Flexibility Act:* The Secretary hereby determines that this proposed rule will not have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Compliance with Executive Order No. 12291:* On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory programs, actions, or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB are not needed for this program amendment.

List of Subjects in 30 CFR Part 906

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

Dated: December 2, 1985.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

PART 906—COLORADO

Part 906 of Title 30 is amended as follows:

1. The authority citation for Part 906 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 906.11 [Amended]

2. Section 906.11 is amended by removing and reserving paragraph (ss).

§ 906.15 [Amended]

3. Section 906.15 is amended by adding a new paragraph (c) to read as follows:

* * * * *

(c) The following amendment is approved effective December 6, 1985.

The revised inspection report form approved by the Mined Land Reclamation Board on May 23, 1985.

[FR Doc. 85–28969 Filed 12–5–85; 8:45 am]

BILLING CODE 4310-05-M

---

30 CFR Part 915

Approval of Amendments and Removal of a Condition on the Approval of the Iowa Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments and the removal of a condition of the Secretary of the interior's approval of the Iowa permanent regulatory program (hereinafter referred to as the Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

By letter dated June 28, 1985, the Iowa Department of Soil Conservation (DSC) submitted to OSM a statute (House File 626) enacted by the Iowa General Assembly and signed by the Governor on May 16, 1985, as a proposed program amendment. The statute is intended to satisfy the condition placed on the Iowa program on November 9, 1983, concerning a civil penalty prepayment provision.

After providing an opportunity for public review and comment and conducting a thorough review of the program amendments, the Secretary has determined that the modifications to the Iowa program satisfy the condition of approval and meet the requirements of SMCRA and the Federal permanent program regulations. Accordingly, the Secretary is removing the condition and approving the regulatory amendments. The Federal rules at 30 CFR Part 915 which codify decisions concerning the Iowa program are being amended to implement these actions.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage states to bring their programs into conformity with the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: December 6, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Sandberg, Acting Director, Kansas City Field Office, Office of Surface Mining, Professional Building, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981. The approval was made effective April 10, 1981. Information pertinent to the general background, revisions, modifications and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981 **Federal Register** (46 FR 5885).

The proposed amendments were submitted by Iowa to remove a condition placed on the Iowa program approval on November 8, 1983 (see the November 9, 1983 **Federal Register** 48 FR 51457). The condition of approval was placed on Iowa's program because it did not include a prepayment requirement comparable to that contained in Section

518(c) of SMCRA and 30 CFR 845.19 of the Federal regulations. The amendment submitted to OSM on June 28, 1985, and published as a proposed rule in the Federal Register on July 31, 1985 (50 FR 30956), establishes a prepayment requirement.

II. Submission of Revisions

By letter dated June 28, 1985, Iowa submitted proposed program amendments consisting of:

An amendment to Iowa Code section 83.10, which allows the Iowa Department of Soil Conservation (DSC) to expend the funds it collects in bond forfeitures and the interest these funds accrue to conduct reclamation activities on any areas disturbed by coal mining not subject to a presently valid permit to conduct surface mining.

A new subsection has been added to section 83.14, Code 1985. This subsection (9) states that when the Director of the DSC has reasonable cause to believe that the operator is unable to complete all or a portion of his required reclamation, the Director shall issue a show cause order as to why all or a portion of the performance bond should not be forfeited. An amendment to the Iowa program, section 83.14, subsection 4, sets forth the appeal procedures for committee decisions made in bond forfeiture show cause hearings.

An amendment to section 83.14, subsection 8, Code 1985, states that the attorney general shall institute any legal proceedings necessary to enforce the penalty provisions or obtain compliance with this chapter. The subsection also states that injunctive relief may be requested to enforce a cessation order.

Amendments to section 83.15, subsections 1, 2, 3, 4, and 5, Code 1985. Subsection 1 establishes a civil penalty not to exceed $5,000 per day for each day of violation. If a cessation order is issued, the amount of the penalty shall take into consideration the operator's history of previous violations, the seriousness of the violation, whether the operator was negligent, and the demonstrated food faith of the operator charged in attempting to achieve rapid compliance after notification of the violations. Operators who fail to correct violations within the period allowed for correction shall pay a civil penalty of $750 for each day the violations continue. Subsection 2 allows the assessing of penalties in accordance with a schedule established by rule. It sets forth procedures for reassessing a penalty and provides that a violation that results in a cessation order shall be assessed a penalty. Subsection 3 provides for a contested case hearing, if requested by the person to whom a penalty was issued. Subsection 4 provides that a judicial review will not be permitted unless the petitioner has posted a bond equal to the amount of the assessed penalty in the district court or has placed the proposed penalty amount in an interest-bearing escrow fund approved by the DSC. Subsection 5 provides that the attorney general, at the DSC's request, shall institute a civil action for injunctive relief. An appeal bond shall be required for an appeal of judgment assessing a civil penalty.

On July 31, 1985, OSM published a notice in the Federal Register announcing receipt of the amendments and requesting public comment on whether the proposed amendments are no less effective than the Secretary's regulations and whether the amendments satisfy the condition of approval (50 FR 30956). The public comment period closed on August 30, 1985. No public hearing was requested and none was held.

III. Secretary's Findings

The Secretary finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Iowa on June 28, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

Section 518(c) of SMCRA and 30 CFR 845.19 require that the person wishing to contest either the amount of the penalty or the fact of the violation forward the proposed penalty amount to the regulatory authority for placement in an interest-bearing escrow account.

Iowa statute section 83.15 subsection 4, Code 1985, provides that judicial review of a penalty assessment shall not be permitted unless the petitioner has posted a bond equal to the amount of the assessed penalty or has placed the proposed amount in an interest-bearing escrow fund.

The Secretary finds that this procedure is consistent with section 518(c) of SMCRA and 30 CFR 845.19 and that the Iowa amendment satisfies the condition.

Amendments to statute section 83.10 Performance bond requirement; 83.14, Enforcement, and 83.15, Penalties were also part of Iowa's submission of June 28, 1985. The amendment to section 81.10 adds a new subsection 6 to provide that the interest or earnings on certain monies from forfeited bonds, abandoned mine land funds, and civil penalties shall be credited to the payment of costs and expenses associated with the reclamation activities of the DSC. There is no Federal counterpart to this provision. However, it is not inconsistent with SMCRA or Federal implementing regulation in 30 CFR Chapter VII.

Section 83.14 has been amended to add a new subsection 9 which provides that the DSC may issue an order to an operator to show cause as to why a performance bond should not be revoked, if the Director has reason to believe that the operator is unable to complete reclamation on all or a portion of the permit area. This provision is an addition to the other enforcement provisions of section 83.14, including subsections 4 and 8, and is no less stringent than those contained in section 521 of SMCRA.

Subsections 1 and 2 of amended section 83.15 provide that the DSC will assess civil penalties and serve the assessments within 30 days of the issuance of the notice or order. Subsection 3 provides that a contested case hearing may be requested to review a notice, order, or penalty assessment, and that a person to whom a penalty assessment has been issued may request a contested case hearing solely for review of the amount of the penalty. Subsection 4 has been described above. Subsection 5 provides that if a violation results in a cessation order, the attorney general shall institute a civil action in district court for injunctive relief. These procedures are similar to the Federal procedures in section 518 of SMCRA and 30 CFR Part 845 and no less effective.

The Secretary finds that the additional program amendments submitted on June 28, 1985, are consistent with SMCRA and the Federal regulations.

IV. Public Comment

No public comments were received during the public comment period.

V. Secretary's Decision

The Secretary, based on the above findings, is approving the June 28, 1985 amendment to the Iowa program and removing the program condition. The Secretary is amending Part 915 of 30 CFR Chapter VII to reflect approval of the above State program modification.

VI. Procedural Matters

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

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

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

List of Subjects in 30 CFR Part 915

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

Accordingly, 30 CFR Part 915 is amended as set forth herein.

Dated: December 2, 1985.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 915—IOWA

30 CFR Part 915 is amended as follows:

1. The authority citation for Part 915 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 915.11 [Removed]

2. 30 CFR 915.11 is amended by removing the paragraph and reserving the Section.

3. 30 CFR 915.15 is amended by adding a new paragraph (e) as follows:

§ 915.15 Approval of regulatory program amendments.

* * * * *

(e) The following amendments submitted to OSM on June 28, 1985, are approved effective December 6, 1985: Iowa Code, Chapter 29, Sections 83.10, 83.14, and 83.15 (Code 1985).

[FR Doc. 85–28970 Filed 12–5–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 54

[DoD Directive 1340.xx]

Allotments for Child and Spousal Support; Formerly: "Involuntary Child and Spousal Support Allotments"

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Interim rule.

SUMMARY: This rule implements section 172 of Pub. L. 97–248, which is codified under title 42, United States Code, section 665 (42 U.S.C. 665). It provides guidance on processing allotments for child and spousal support from the pay of active duty military personnel, when direct payment is requested by an authorized person. The interim rule contains many of the suggested changes requested in response to the proposed rule in volume 47, number 201, **Federal Register**, page 46297 (1982). These changes were primarily administrative.

EFFECTIVE DATE: December 6, 1985.

ADDRESS: Office of the Deputy Assistant Secretary of Defense (Management Systems), Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. James T. Jasinski, telephone 202–697–0536.

SUPPLEMENTARY INFORMATION: Written comments must be received by January 21, 1986. Comments will be available for public inspection by request. Because of the anticipated number of comments, we do not plan to acknowledge individual comments. However, we will respond to the comments in the preamble of the final rule. In order to maintain effective implementation, DoD will follow the procedures in the interim rule starting with the effective date until a final rule is issued.

Executive Order 12291

DoD has determined that this rule is not a major rule for the purpose of E.O. 12291, because it is not likely to have an annual effect on the economy of $100 million or more, and therefore does not require a regulatory impact analysis.

Paperwork Reduction Act

This rule proposes revised information collection requirements that have been submitted to the Office of Management and Budget (OMB) for approval. The former OMB control number was 0704–0180.

Regulatory Flexibility Act of 1980

I certify that this rule shall be exempt from the requirements under 5 U.S.C. 601–612. In addition, the rule does not have a significant economic effect on small entities as defined in the Regulatory Flexibility Act.

Dated: November 29, 1985.

Particia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

List of Subjects in 32 CFR Part 54

Child support and military personnel.

Accordingly, it is proposed to revise 32 CFR, Chapter 1, by changing Part 54 to read as follows:

PART 54—ALLOTMENTS FOR CHILD AND SPOUSAL SUPPORT

Sec.

54.1 Purpose.
54.2 Applicability and scope.
54.3 Definitions.
54.4 Policy.
54.5 Responsibilities.
54.6 Procedures.

Authority: 15 U.S.C. 1673, 37 U.S.C. 101, 42 U.S.C. 665.

§ 54.1 Purpose.

Under 42 U.S.C. 665, this part provides policy on statutorily required child or child and spousal support allotments, assigns responsibilities, and prescribes procedures.

§ 54.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense and the Military Departments. The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

(b) Its provisions cover members of the Military Services on extended active duty. This does not include a member under a call or order to active duty for a period of less than 30 days.

§ 54.3 Definitions.

(a) *Authorized Person.* Any agent or attorney of any state having in effect a plan approved under part D of title IV of the Social Security Act (42 U.S.C. 651–665), who has the duty or authority to seek recovery of any amounts owed as child or child and spousal support (including, when authorized under the state plan, any official of a political subdivision); and the court that has authority to issue an order against a member for the support and maintenance of a child, or any agent of such court.

(b) *Child Support.* Periodic payments for the support and maintenance of a child or children, subject to and in accordance with state or local law. This includes, but is not limited to, payments to provide for health care, education,

recreation, and clothing or to meet other specific needs of such a child or children.

(c) *Designated Official.* The representative of the Military Service concerned who is authorized to receive and to process notices under this part. See subsection 54.6(e) for a list of designated officials.

(d) *Notice.* A court order, letter, or similar documentation issued by an authorized person providing notification that a member has failed to make periodic support payments under a support order.

(e) *Spousal Support.* Periodic payments for the support and maintenance of a spouse or former spouse in accordance with state or local law. It includes, but is not limited to, separate maintenance, alimony while litigation continues and maintenance. Spousal support does not include any payment for transfer of property or its value by an individual to his or her spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

(f) *Support Order.* Any order providing for child or child and spousal support issued by a court of competent jurisdiction within any state, territory, or possession of the United States, including Indian tribal courts, or by administrative procedures established under state law that afford substantial due process and is subject to judicial review.

§ 54.4 Policy.

The Department of Defense is obligated by statute to require child, or child and spousal, support allotments from the pay and allowances of a member who has failed to make periodic payments under a support order in a total amount equal to the support payable for 2 months or longer. The member's allotment shall be established by the Secretary of the Military Department concerned, or the Secretary's designee, provided all requirements of this Part have been met.

§ 54.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* shall provide guidance, monitor compliance with this Part, and have the authority to change or modify the procedures set forth in § 54.6.

(b) The *Secretaries of the Military Departments* shall comply with this part.

§ 54.6 Procedures.

(a) *Notice to Designated Official.* (1) An authorized person shall send to the designated official of the member's Military Service a signed notice that includes:

(i) A statement that delinquent support payments equal or exceed the amount of support payable for 2 months under a support order, and a request that an allotment be initiated pursuant to 42 U.S.C. 665.

(ii) A certified copy of the support order.

(iii) The amount of the monthly support payment. Such amount may include arrearages, if a support order specifies the payment of such arrearages. The notice shall indicate how much of the amount payable will be applied toward liquidation of the arrearages.

(iv) A statement that delinquent support payments are more than 12 weeks in arrears, if appropriate.

(v) Sufficient information identifying the member to enable processing by the designated official. The following information is requested: (A) Full name; (B) Social Security number; and (C) Military Service (Army, Navy, Air Force, or Marine Corps).

(vi) The full name and address of the allottee. The allottee shall be an authorized person or the recipient named in the support order.

(vii) Any limitations on the duration of the support allotment.

(viii) A certification that the official sending the notice is an authorized person.

(2) Notice shall be sent by mail or delivered in person to the appropriate designated official of the Military Service. The designated official shall note the date and time of recipient on the notice.

(3) Notice is effective when it is received in the office of the designated official.

(4) When the notice does not sufficiently identify the member, it shall be returned directly to the authorized person with an explanation of the deficiency. However, before the notice is returned, if there is sufficient time, an attempt shall be made to inform the authorized person who sent the notice that it will not be honored unless adequate information is supplied.

(5) Upon receipt of effective notice of delinquent support payments, together with all required supplementary documents and information, the designated official shall identify the member from whom moneys are due and payable. Pursuant to § 54.6(d), the allotment shall be established in the amount necessary to comply with the support order and liquidate arrearages if provided by a support order when the maximum amount to be allotted under this provision, together with any other moneys withheld for support from the member, does not exceed:

(i) Fifty percent of the member's disposable earnings for any month in which the member asserts by affidavit or other acceptable evidence that he or she is supporting a spouse, dependent child, or both, other than a party in the support order. When the member submits evidence, copies shall be sent to the authorized person, together with notification that the member's support claim will be honored. If the support claim is contested by the authorized person, that authorized person may refer this matter to the appropriate court, or other authority, for resolution.

(ii) Sixty percent of the member's disposable earnings for any month in which the member fails to assert by affidavit or other acceptable evidence that he or she is supporting a spouse, dependent child, or both.

(iii) Regardless of the limitations above, an additional 5 percent of the member's disposable earnings shall be withheld when it is stated in the notice that the total amount of the member's support payments is 12 or more weeks in arrears.

(b) *Disposable Earnings.* (1) In determining disposable earnings for a member assigned within the contiguous United States, include the following payments. These items are defined in DoD 5000.12-M, "DoD Manual for Standard Data Elements," December 1982.

(i) Basic pay (including Military Service academy cadet and midshipmen pay).

(ii) Basic allowances for quarters for members with dependents, and members without dependents in the grade E-7 or higher.

(iii) Basic allowance for subsistence for commissioned and warrant officers.

(iv) Special pay for physicians, dentists, optometrists, and veterinarians.

(v) Submarine pay.

(vi) Flying pay (all crew members).

(vii) Diving pay.

(viii) Proficiency pay or special duty assignment pay.

(ix) Career sea pay.

(2) In determining earnings for a member assigned outside of the contiguous United States, include the following, in addition to the payments listed in subsection 54.6(b)(1) above.

(i) Foreign duty pay.

(ii) Special pay for duty subject to hostile fire (applies only to members permanently assigned in a designated area).

(iii) Family separation allowances (only under certain type-II conditions).

(iv) Special pay for overseas extensions.

(3) In determining the amount of disposable earnings, the following amounts shall be excluded:

(i) Amounts owed by the member to the United States.

(ii) Amounts mandatorily withheld for the U.S. Soldiers' and Airmen's Home.

(iii) Fines and forfeitures ordered by a court-martial or by a commanding officer.

(iv) Federal and state employment and income taxes withheld to the extent that the amount deducted is consistent with the member's tax liability.

(v) Deductions for the Servicemen's Group Life Insurance coverage.

(vi) Advances of pay received by the member prior to receipt of notice in § 54.6(c)(1) that may be due and payable by the member at some future date. Requests for advances after notice for a statutorily required support allotment shall be reduced by the amount of the statutorily required support allotment.

(vii) Other amounts required by law to be deducted.

(c) *Notice to Member and Member's Commanding Officer.* (1) As soon as possible, but not later than 15 calendar days after the date of receipt of notice, the designated official shall send to the member, at his or her duty station, written notice:

(i) That notice has been received from an authorized person, including a copy of the documents submitted.

(ii) Of the maximum limitations provided in 15 U.S.C. 1673, with a request that the member submit supporting affidavits or other documentation necessary for determining the applicable limitation.

(iii) That the member may submit supporting affidavits or other documentation as evidence that the information contained in the notice is in error.

(vi) That by submitting supporting affidavits or other necessary documentation, the member consents to the disclosure of such information to the party requesting the support allotment.

(vii) Of the amount or percentage that will be deducted if the member fails to submit the documentation necessary to enable the designated official to repond to the notice within the time limits set forth.

(viii) That a consultation with a judge advocate or legal officer will be provided by the Military Service, if possible, and that the member should contact immediately the nearest legal services office.

(ix) Of the date that the allotment is scheduled to begin.

(2) The designated official shall notify the member's commanding officer, or designee, of the need for consultation between the member and a judge advocate or legal officer. The designated official shall provide the member's commanding officer, or designee, with a copy of the notice and other legal documentation received by the designated official.

(3) The Military Services shall provide the member with the following:

(i) When possible, a consultation in person with a judge advocate or legal officer of the Military Service concerned, to discuss the legal and other factors involved with the member's support obligation and his or her failure to make payment.

(ii) Copies of any other documents submitted with the notice.

(4) The member's commanding officer, or designee, shall confirm in writing to the designated official within 30 days of the date of the notice that the member received a consultation concerning the member's support obligation and the consequences of failure to make payments, or when appropriate, of the inability to arrange such consultation and the status of continuing efforts to fulfill the consultation requirement.

(5) If, within 30 days of the date of the notice, the member furnishes to the designated official affidavits or other documentation showing the information in the notice to be in error, the designated offical shall consider the member's response. The designated official may return to the authorized person without action the notice for a statutory required support allotment together with the member's affidavit and other documentation, if the member submits substantial proof of error, such as:

(i) The support payments are not delinquent.

(ii) The underlying support order in the notice has been amended, superseded, or set aside.

(d) *Payments.* (1) Except as provided in § 54.6(d)(3), below, the Secretary of the Military Department concerned, or designee, shall make the support allotment by the first end-of-month payday after the designated official is notified that the member has had a consultation with a judge advocate or legal officer, or that a consultation was not possible, but not later than the first end-of-month payday after 30 days have elapsed from the date of the notice to the member. The Military Services will not be required to vary their normal military allotment payment cycle to comply with the notice.

(2) If several notices are sent with respect to the same member, payments shall be satisfied on a first-come, first-served basis within the amount limitations in § 54.6(a)(5) above.

(3) When the member identified in the notice is found not to be entitled to money due from or payable by the Military Service, the designated official shall return the notice to the authorized person and shall advise him or her that no money is due from or payable by the Military Service to the named individual. When it appears that amounts are temporarily exhausted or otherwise unavailable, the authorized person shall be advised fully as to why, and for how long, any money is unavailable, if known. If the member separates from active duty, the authorized person shall be informed that the allotment is discontinued.

(4) Payment of statutorily required allotments shall be enforced over other voluntary deductions and allotments when the gross amount of pay and allowances is not sufficient to permit all authorized deductions and collections.

(5) The authorized person or the allottee shall notify the designated official promptly if the operative court order upon which the allotment is based is vacated, modified, or set aside. The designated official shall also be notified of any events affecting the allottee's eligibility to receive the allotment, such as the former spouse's remarriage, if a part of the payment is for spousal support, and notice of a change in eligibility for child support payments under circumstances of the death, emancipation, adoption, or attainment of majority of a child whose support is provided through the allotment.

(6) An allotment established under this part shall be adjusted or discontinued upon notice from the authorized person.

(7) Neither the United States, nor any officer or employee thereof, nor any federal governmental entity shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to notice regular on its face, if such payment is made in accordance with this Directive. If a designated official receives notice based on a support order which, on its face, appears to conform to the laws of the jurisdiction from which it was issued, the designated official shall not be required to ascertain whether the authority that issued the order had obtained personal jurisdiction over the member.

(e) *List of Designated Officials.*

Army—Commander, Army Finance and Accounting Center, ATTN: FINCL-G, Indianapolis, IN 46249-0160, (317) 452-2155.

Navy—Director, Navy Family Allowance Activity, Anthony J. Celebrezzee Federal Building, Cleveland, OH 44199, (216) 522-5301.

Air Force—Commander, Air Force Accounting and Finance Center, ATTN: JA, Denver, CO 80279, (303) 370-7524.

Marine Corps—Commanding Officer, Marine Corps Finance Center (Code AA), Kansas City, MO 64197, (816) 926-7103.

[FR Doc. 85-28959 Filed 12-5-85; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 78

[DoD Directive 1332.34]

Voluntary State Tax Withholding From Retired Pay; Correction

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule regarding voluntary state tax withholding from retired pay that appeared on pages 47219 through 47222 in the **Federal Register** on Friday, November 15, 1985. This action is necessary since the interim rule added Part 78 and to conform with the text of DoD Directive 1332.34.

FOR FURTHER INFORMATION CONTACT: Mr. James Jasinski, (202) 697-0536.

SUPPLEMENTARY INFORMATION:

PART 78—CORRECTED

The following corrections are to be made to 32 CFR Part 78:

§ 78.5 [Corrected]

1. Page 47220, § 78.5(f), third sentence, change to read:"The Uniformed Services may honor a retiree's request for refund until a payment has been made to the State."

2. Page 47220, amendatory language, change to read: "Accordingly, 32 CFR, Chapter 1, Part 78, is revised to read as follows: . . ."

3. Page 47221, § 78.5(f), first sentence, change to read: "The Uniformed Services may honor a retiree's request for refund until a payment has been made to the State."

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 3, 1985.

[FR Doc. 85-29012 Filed 12-5-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-364-N]

Medicare Program; Further Delay in Implementing Certain Changes to the Prospective Payment System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of legislative postponement of certain effective dates of final rules.

SUMMARY: The Temporary Debt Limit Extension Act of 1985, enacted on November 14, 1985, extends through December 14, 1985 the Federal fiscal year 1985 rules for determining amounts of Medicare payment to hospitals under the prospective payment system and rate-of-increase limits for hospitals excluded from that system.

FOR FURTHER INFORMATION CONTACT: Linda Magno (301) 594-9343.

SUPPLEMENTARY INFORMATION: On November 12, 1985, we published a notice in the **Federal Register** (50 FR 46651) to alert the public about the provisions of section 5 of the Emergency Extension Act of 1985 (Pub. L. 99-107) and to identify certain Medicare regulations affected by the legislation. Section 5 of Pub. L. 99-107, which was enacted on September 30, 1985, extended through November 14, 1985 the Medicare payment rules for inpatient hospital services that were in effect on September 30, 1985. However, on November 14, 1985, Congress passed and the President signed the Temporary Debt Limit Extension Act of 1985 (Pub. L. 99-155). Section 2(d) of Pub. L. 99-155 further extended those Medicare payment rules through December 14, 1985.

We are issuing this notice to inform the public that, as a result of the November 14 enactment, revised payment rates for hospitals covered by the prospective payment system, the rate-of-increase limits for hospitals excluded from that system, and the amendments to 42 CFR 412.118 (f)(2) and (f)(3), all of which were originally scheduled to be effective on October 1, 1985 under the September 3, 1985 final rule (50 FR 35646), are now postponed through December 14, 1985. This further postponement also applies to the regulations cited in our November 12 notice, which are as follows: §§ 412.63 (c)(3) and (d); 412.70 (c)(3), (c)(4), (d)(2), and (d)(3), 412.73(c)(3); 412.80(a)(1)(ii)(B); and 412.82(c).

(Secs. 1102, 1871, and 1886 of the Social Security Act; 42 U.S.C. 1302, 1395hh, and 1395ww; Sec. 5 of Pub. L. 99-107 as amended by sec. 2(d) of Pub. L. 99-155)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: December 2, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 85-28951 Filed 12-3-85; 3:47 pm]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 84-885; FCC 85-566]

Deregulatory Options and Streamlined Application Processing

Correction

In FR Doc. 85-27164, beginning on page 47543 in the issue of Tuesday, November 19, 1985, make the following correction:

On page 47549, first column, the fifth line of amendatory instruction 7. should have read: "and redesignating (b)(6) as (b)(2); removing (c)(2),".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 90

[Docket No. 43344, Amdt. No. 1]

Audits of State and Local Governments; Correction

AGENCY: Department of Transportation.

ACTION: Final rule, correction.

SUMMARY: On August 19, 1985, the Department of Transportation issued a final rule and request for comments establishing a requirement for all recipients of Department of Transportation (DOT) assistance funds to comply with the requirements of the Single Audit Act of 1984, Pub. L. 98-502, and Office of Management and Budget (OMB) Circular A-128, Audits of State and Local Governments. OMB Circular A-128 directs agencies to publish regulations implementing it. This document corrects certain citation errors in the August final rule.

EFFECTIVE DATE: These corrections will be effective December 6, 1985.

FOR FURTHER INFORMATION CONTACT: Becky L. Bentson, Office of the General Counsel, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 472-5577.

SUPPLEMENTARY INFORMATION: Since this amendment merely revises several incorrect statutory citations in the rule, notice and comment are unnecessary and good cause exists for making the amendment effective upon publication. The amendment is not major under E.O. 12291 or significant under the Department's Regulatory Policies and Procedures. It has no economic impact.

List of Subjects in 49 CFR Part 90

Audit requirements for state and local governments, Accounting.

Corrections

Accordingly, under the authority contained in 49 CFR 1.57(1), 49 CFR Part 90, (50 FR 33339, August 19, 1985) is corrected as follows:

1. By replacing the current authority cite, "Sec. 9(e)(2) of the Department of Transportation Act [49 U.S.C. 1657(e)(2)]" with "31 U.S.C. 7501 and 49 U.S.C. 322."

§ 90.1 [Corrected]

2. By replacing the cite, "31 U.S.C. 75" in the first sentence of § 90.1 with "31 U.S.C. 7501."

§ 90.3 [Corrected]

3. By replacing the cite, "section 9(e)(2) of the Department of Transportation Act [49 U.S.C. 1657(e)(2)]" in § 90.3 with "49 U.S.C. 322".

Issued in Washington D.C. on November 29, 1985.

Jim J. Marquez,

General Counsel.

[FR Doc. 85-28946 Filed 12-5-85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 51189-5189]

Atlantic Surf Clam and Ocean Quahog Fisheries

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

ACTION: Notice of emergency change in annual specification.

SUMMARY: NOAA issues a notice of emergency change in an annual specification for the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP). This action increases the annually selected 1985 ocean guahog quota by 500,000 bushels, from 4,400,000 to 4,900,000 bushels. This is action is intended to prevent a lengthy closure in the ocean quahog fishery during the last quarter of the 1985 fishing year.

EFFECTIVE DATES: November 22, 1985 until February 19, 1986 unless superseded by subsequent notice setting the 1986 annual specification.

ADDRESS: Copies of the FMP are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 2112/2115 Federal Building, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: William B. Jackson (Fisheries Management Specialist), 202-634-7432.

SUPPLEMENTARY INFORMATION: This notice of emergency change was prepared by NMFS at the request of the Mid-Atlantic Fishery Management Council. The purpose of this action is to increase the 1985 ocean quahog quota from 4,400,000 bushels (48 FR 57303, December 29, 1983) to 4,900,000 bushels. The additional 500,000 bushels is consistent with the objective of the FMP to maintain the fishing over a full year within the annual range of 4,000,000 to 6,000,000 bushels.

This action is being implemented using emergency authority provided to the Secretary under section 305(e)(2)(B) of the Magnuson Fishery Conservation and Management Act. At its September 1985 meeting, the Mid-Atlantic Fishery Management Council voted to increase the ocean quahog quota by up to 500,000 bushels.

As of September 27, the ocean quahog harvest was 3.72 million bushels or 85 percent of the quota with 75 percent of the fishery year completed. The Regional Director acted to reduce the fishing time for ocean quahog fishing from 7 days a week to 5 days a week (50 FR 46072, November 6, 1985). Reduction of fishing time is the only measure provided by the FMP to affect harvest reduction, except for a complete closure.

A key position of the Council is that fishing at some level should continue throughout the entire year. Restrictions on fishing time and short-term closures (i.e., up to 2 weeks), if necessary, are preferable to long closures at the end of the year. Because of the demand for product, some quahog vessels that have permits for the mid-Atlantic surf clam fishery will shift to surf clam fishing in the event of an ocean quahog fishery closure. Such an influx of additional effort into the surf clam fishery would further increase the surf clam landings resulting in the early closure of that fishery.

The closure of these fisheries would have severe and immediate social and economic impacts. Fishermen would have no fishing income as the clam vessels are specialized and cannot be readily adapted to other fisheries. The clam processing plants would close for lack of product. In addition to the interruption of processed product to the markets, plant closures would create widespread unemployment in this industry. There are few, if any, alternative employment opportunities for unemployed plant workers.

For the reasons specified above, the Secretary issues this emergency notice changing the 1985 ocean quahog quota from 4,400,000 bushels to 4,900,000 bushels for a period of 90 days unless superseded by a subsequent notice specifying the 1986 quota.

Classification

The Assistant Administrator, NOAA, has determined that this action is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that, due to the possibility of imminent closure of the fishery and the potential for economic dislocation, the reasons justifying promulgation of the action on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of this emergency action, under the provision of sections 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this action does not directly affect the coastal zone of any State with an approved coastal zone management program.

This emergency action is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This action is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that Order.

This action increases the quota within the scope of the optimum yield range set forth in the FMP. As such, the Assistant Administrator has determined that it is categorically excluded from the requirement to prepare an environmental document, as provided by NOAA Directive 02-10.

This action does not contain a collection of information requirement subject to the Paperwork Reduction Act.

This emergency action is exempt from the procedures of the Regulatory Flexibility Act because it is being issued without opportunity for prior public comment.

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

List of Subjects in 50 CFR Part 652

Fisheries, Fishing.

Dated: December 3, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-29009 Filed 12-3-85; 4:17 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 235
Friday, December 6, 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

Food and Nutrition Service

7 CFR Parts 210, 225, and 226

Meat Alternates Used in Child Nutrition Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service of the Department of Agriculture proposes to amend regulations governing the meal pattern requirements for the National School Lunch Program, the Summer Food Service Program, and the Child Care Food Program to allow the use of nuts and seeds and nut and seed butters as meat alternates. Peanut butter has always been included as a meat alternate in the Child Nutrition Programs. However, despite their nutritional comparability to peanut butter and other authorized meat alternate items, nuts and seeds and other nut and seed butters are not currently recognized as making a contribution toward Child Nutrition Program meal pattern requirements. With the changing trend in food habits, participants in the Child Nutrition Programs have requested that the list of allowable meat alternates be expanded to accommodate these changes. The Department is issuing this proposal in response to these requests, in an effort to establish more consistent crediting standards and to provide increased flexibility in menu planning. This proposal will allow peanuts, soynuts, tree nuts such as walnuts (excluding acorns, chestnuts, and coconuts), and seeds (that are nutritionally comparable to meat or other meat alternates) to fulfill: (1) No more than one-half of the meat/meat altenate requirement for lunch/supper patterns for all Child Nutrition Programs; and (2) all of the meat/meat alternate requirement for supplemental food (snack) patterns for the child care and summer programs.

The Department is also proposing that in additon to peanut butter, other nut and seed butters be allowed as meat alternates in the Child Nutrition Programs. To provide consistency with the proposed requirement for nuts and seeds, this proposal will allow nut and seed butters to fulfill: (1) No more than one-half of the meat/meat alternate requirement for the school lunch and child care lunch/supper patterns; and (2) all of the meat/meat alternate requirement for the supplemental food (snack) patterns for the child care and summer program. However, in recognition of equipment and serving limitations, the proposal will allow nut and seed butters to fulfill all of the meat/meat alternate requirement for the summer program lunch/supper pattern.

Since peanut butter is currently allowed to fulfill all of the meat/meat alternate requirement for all Child Nutrition Program meal patterns, the Department is also willing to take comments on an alternative proposal for nut and seed butters. This alternative proposal would allow peanut butter and other nut and seed butters to fulfill all of the meat/meat alternate requirement for the school lunch, child care, and summer program lunch/supper patterns and supplemental (snack) patterns for the child care and summer program.

DATE: Comments must be postmarked on or before January 21, 1986.

ADDRESS: Comments may be mailed to Alberta C. Frost, Director, Nutrition and Technical Services Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Comments will be received and may be inspected at Room 602, Nutrition and Technical Services Division, Park Office Center Building, 3101 Park Center Drive, Alexandria, Virginia, during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Frost at the address listed above or call (703) 756-3556.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and has been classified nonmajor because it does not meet any of the three criteria of the Executive Order. It will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant impact on competition, employment, investment, productivity, innovation or on the ability of U.S. enterprises to compete with foreign based enterprises in domestic or export markets. This proposal provides greater flexibility to schools and institutions participating in the Child Nutrition Programs, rather than imposing more restrictive requirements upon them. The overall types and frequency of service of foods used in the Child Nutrition Programs should not be significantly affected by this proposal. Nuts and seeds and nut and seed butters are currently served as "other foods" which are used to complement meal pattern requirements in the Child Nutrition Programs to meet regional and ethnic food prefernces.

These programs are listed in the Catalog of Federal Domestic Assistance under Numbers 10.555, 10.558, and 10.559 and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985)

The proposal has also been reviewed with regard to the provisions of Pub. L. 96-354. Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that the proposal does not have a significant economic impact on a substantial number of small entities.

This proposed rule does not contain reporting and record keeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act.

Background

The National School Lunch Act and Child Nutrition Act of 1966 require that the Secretary of Agriculture set minimal nutritional requirements for meals served in the Child Nutrition Programs. Meal pattern requirements have been established for specific types and amounts of food to be served in each of the programs that the Department admininisters. These meal patterns are designed to provide a flexible framework for foodservice managers to use in planning nutritious lunches from a wide variety of foods and within a diversity of regional, cultural, and ethnic food preferences. From time to time, the Department has revised these meal patterns to reflect new knowledge about

food consumption habits and the food preferences of children, as well as nutritional needs.

The meal pattern requirements for the National School Lunch Program, Summer Food Service Program, and Child Care Food Program specify amounts of food from various food components. One of these is the meat/meat alternate component. In addition to meat, poultry, and fish, various meat alternates are allowed to be used to fulfill all or part of the requirement for this component. Currently approved meat alternates are cheese, cooked dry beans or peas, eggs, and peanut butter. The Department authorized specific quantities of these foods as meat alternates based on their protein and vitamin/mineral content (e.g. iron) as compared to meat and practicality of serving size. In approving these foods as meat alternates, the Department also considered the meal pattern requirement for lunch/supper that foods used to fulfill the meat/meat alternate component be served in the main dish or the main dish and one other menu item. Consistent with this requirement, the Department limited allowable meat alternates to those foods that were not only nutritionally comparable to meat, but were also traditionally recognized as main dish items. This recognition was based on knowledge of food consumption habits and food preferences at the time.

Food consumption habits and food preferences are influenced by many cultural, ethnic, economic, religious, and environmental factors and are constantly changing. These changes can affect how foods are used in meals. Nuts and seeds and a variety of nut and seed butters are now playing a more conventional and popular role in meals as or in main dish items. Therefore, in an effort to more accurately meet the food preferences of all children participating in the Child Nutrition Programs while maintaining the nutritional quality of the meals served, the Department is proposing to add nuts and seeds and nut and seed butters to the list of acceptable meat alternates for child nutrition meal pattern requirements.

Issues Addressed

There are a number of issues surrounding the use of these foods as meat alternates. The following is a discussion of pertinent issues and how the Department is addressing them in the proposed rule.

Regulations for the Child Nutrition Programs have always included peanut butter as an allowable meat alternate, but not peanuts or other nuts and seeds and their butters. Consequently, over the years the Department has received requests from program participants to include peanuts and other nuts and seeds and their butters as meat alternates in the Child Nutrition Programs. Peanuts and other nuts and seeds, however, have generally been considered a snack food, not a main dish item, as are the other currently approved meat/meat alternates for the Child Nutrition Programs. In the past, there had been concern that allowing peanuts and other nuts and seeds as meat alternates might conflict with nutrition education principles and good menu planning practices by allowing meals to be served that might not provide a traditionally recognized entree.

Although nuts and seeds used in sufficient quantity to meet the full meat/meat alternate requirement for lunch/supper patterns could result in the service of a snack type food rather than a traditional entree, they could play a positive role in the meal when used in limited amounts. Nuts and seeds used as meat alternates can add variety to salad bars, which are increasingly popular in the Child Nutrition Programs. Many ethnic and regional dishes, e.g. oriental chicken and peanuts and peanut soup, also provide a traditional use for nuts and seeds in main dish items. Nut and seed butters can also play a conventional role in the meal. Peanut butter, which is the most commonly used butter, is traditionally recognized as an entree, i.e. sandwich, and is currently allowed to be used to fulfill all or part of the meat/meat alternate requirement.

Most nuts and seeds and nut and seed butters that are commonly available are nutritionally comparable to meat or other currently approved meat alternates. All commonly used seeds and nut and seed butters have a protein level comparable to other currently approved meat alternates. Most seeds are also comparable to or greater in iron value than meat. With a few exceptions, commonly available tree nuts, such as walnuts, are also comparable to meat in iron value and have a protein level comparable to other currently approved meat alternates. Exceptions to this include acorns, chestnuts, and coconuts. These tree nuts have extremely low protein levels and are not traditionally recognized as a protein source or meat alternate in meals. Peanuts and soybean kernels (soynuts), although commonly considered nuts, are botanically legumes and related to dry beans. These "nuts" have a higher protein value than tree nuts. The protein level of peanuts is comparable to meat, and soynuts are greater in protein value than meat.

In view of the above, the Department is proposing to allow peanuts, soynuts, tree nuts (excluding acorns, chestnuts and coconuts), and seeds (that are nutritionally comparable to meat or other meat alternates) as meat alternates in the Child Nutrition Programs. In order to maintain a traditionally recognized entree, these nuts and seeds would be allowed to fulfill no more than one-half of the meat/meat alternate requirement for the school lunch pattern and lunch/supper patterns for the child care and summer programs. However, they could be used to fulfill all of the meat/meat alternate requirement for supplemental food (snack) patterns for the child care and summer programs. It is proposed that 1 ounce of allowable nuts and seeds be considered equal to 1 ounce of cooked lean meat.

The Department is also proposing that in addition to peanut butter, other nut and seed butters be allowed as meat alternates in the Child Nutrition Programs. To provide consistency with the proposed requirement for nuts and seeds, peanut butter and other nut and seed butters would be allowed to fulfill no more than one-half of the meat/meat alternate requirement for the school lunch pattern and lunch/supper pattern for the child care program and all of the meat/meat alternate requirement for supplemental food (snack) patterns for the child care and summer programs. However, recognizing service and equipment limitations, it may be difficult to plan menus with acceptable complimentary meat/meat alternate items if nut and seed butters are limited to one-half credit in the Summer Food Service Program. Therefore, peanut butter and other nut and seed butters would be allowed to fulfill all of the meat/meat alternate requirement for the summer program lunch/supper pattern. It is proposed that 2 tablespoons of nut or seed butter be considered equal to 1 ounce of cooked lean meat.

As an alternative, the Department will accept comments on a proposal that peanut butter be retained as a meat alternate that may fulfill all of the meat/meat alternate requirement for all Child Nutrition Program meal patterns. The Department is requesting comments on this alternative proposal in view of the traditional contribution that peanut butter has made in children's food service. The Department also proposes this alternative for other nut and seed butters, to provide consistency in crediting all items within the same category as peanut butter.

Nut and seed flours and meals, and formulated wheat-based and corn-based "nuts" are excluded from consideration as meat alternates in this proposal. Nut and seed flours or meals, as well as wheat and other grain flours, are commonly used in products that contribute toward the bread/bread alternate component. They are not recognized as a protein source or meat alternate in the meal except as designated as "alternate foods" in Child Nutrition Program regulations. Appendix A: Alternate Foods for Meals, in 7 CFR Parts 210, 225 and 226 authorizes processed plant protein products or vegetable protein products, such as soy flour, that meet required nutritional specifications, to be used to resemble and substitute, in part, for meat, poultry or seafood. Regulations and program guidance also authorize the use of enriched macaroni products with fortified protein made from plant protein sources, such as soy flour or oil seeds, to meet part of the meat/meat alternate requirement when used with meat, poultry, seafood or cheese. Formulated wheat-based and corn-based "nuts" are excluded from consideration because they are not naturally occurring nuts, but formulated snack-style foods for which no standards of identity have been established.

School Breakfast Program

This proposal does not amend the meal pattern requirements for the School Breakfast Program, because the service of meat/meat alternates is a recommendation and not a requirement for this program. However, in the event this proposal is published as a final rule, nuts and seeds and nut and seed butters as defined in such rule, will also be applicable for use as meat alternates in the School Breakfast Program.

Final Rule

To provide clarity, the meal pattern charts for Parts 210, 225, and 226 presented in this proposal reflect only the proposed amendments to the meat/meat alternate component and contain several footnotes. When the final rule is published, the footnotes will be rearranged and incorporated into regulatory text as appropriate, and the meal pattern charts will appear in their entirety. Additionally, when this rule becomes final, the Department will issue guidance material on the use of nuts and seeds and their butters in the Child Nutrition Programs. This guidance material will further define the various types of nuts and seeds available on the market that could be used as meat alternates in child nutrition meal patterns.

Comment Period

The Department is providing a 45-day comment period on this proposal. However, commentors are urged to submit their recommendations as quickly as possible to enable the Department to begin its preliminary evaluation of comments prior to the close of the comment period. The Department anticipates completion of the official comment analysis and publication of a final rule early enough to give school food purchasing officials, food suppliers, and school menu planners the opportunity to include any newly approved foods in their plans for School Year 1985–86. The Department will expedite the rulemaking process to enable many school officials to sign contracts for the purchase of foods during the 1985–86 school year.

Comments Requested

In addition to nuts and seeds and their butters, the Department is aware that the use of yogurt and tofu as or in main dish items has become increasingly popular in the diets of various segments of the population. Therefore, the Department solicits comments regarding amendment of the regulations to allow these foods as meat alternates in the Child Nutrition Programs. Specifically, the Department has received recommendations that the following items be added as meat alternatives: (1) Plain or flavored yogurt, excluding frozen forms, and (2) regular or firm tofu (8 percent minimum protein content), excluding frozen forms. Frozen forms of these products are commonly used as desserts and, therefore, have not generally been recommended as meat alternates. Comments are specifically requested on proposing regulations to allow yogurt and tofu as meat alternates.

Additionally, the Department has previously allowed the use of tofu on an experimental basis in some schools and has received no negative reports. However, we are concerned that studies conducted by the Food and Drug Administration have shown that moist soy products, including tofu, can support the rapid and progressive growth of pathogenci bacteria. Therefore, the Department is specificially calling attention to this issue and requesting comments on the sanitation issues presented by tofu and its consumption by young children.

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Grant programs—social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 225

Food assistance program, Grant programs—health, Infant and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 226

Daycare, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Parts 210, 225, and 226 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citations for Part 210 continues to read as follows:

Authority: Secs. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779, unless otherwise noted.

2. In § 210.10, the School Lunch Pattern table is amended by revising the requirement for peanut butter and adding other nut and seed butters and nuts and seeds as meat alternates as follows:

§ 210.10 Requirements for lunches.

* * * * *

TABLE 1

Components		Minimum quantities				
		Group I, age 1-2 (preschool)	Group II, age 3-4 (preschool)	Group III, age 5-8, (K-3)	Group IV, age 9 and older (4-12)	Recommended quantities, group V, 12 years and older (7-12[1])
Meat or Meat Alternate (quality of the edible portion as served).	***** Peanut butter, soynut butter, or other nut or seed butters.	1 Tbsp[4]=50%	1½ Tbsp[4]=50%	1½ Tbsp[4]=50%	2 Tbsp[4]=50%	3 Tbsp[4]=50%
	Peanuts, soynuts, tree nuts, or seeds [5,6]..... or any equivalent quantity of any combination of any above.	½ oz[4]=50%	¾ oz[4]=50%	¾ oz[4]=50%	1 oz[4]=50%	1½ oz[4]=50%

*****(footnotes will be reorganized in final rule).
[4] No more than 50% of the requirement shall be met with nut or seed butters or nuts or seeds. Nut or seed butters or nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. Exceptions to this requirement are allowed for nut or seed butters to accommodate the service of off-site bag lunches. Nut and seed butters may be used to fulfill all of the requirement when off-site bag lunches are served. For purposes of determining combinations, 2 Tbsp. of nut or seed butters or 1 oz. of nut or seeds is equivalent to 1 oz. of cooked lean meat, poultry or fish.
[5] Tree nuts and seeds include nuts and seeds, as defined in program guidelines, that are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall *not be* used as meat alternates due to their low protein content.
[6] Nut and seed meals or flours may be used as an ingredient in a bread/bread alternate, but shall *not* be used as a meat alternate except as defined in Appendix A: Alternate Foods and Meals.

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citations for Part 225 continues to read as follows:

Authority: Secs. 603, 807, 809, 816, and 817, Pub. L. 97-35, secs. 203 and 206, Pub. L. 96-499, secs. 5, 7, 10, Pub. L. 95-627, 95 Stat. 3603 (42 U.S.C. 1771); sec. 2, Pub. L. 95-166, 91 Stat. 1325 (42 U.S.C. 1761); sec. 7, Pub. L. 91-248, 84 Stat. 211 (42 U.S.C. 1859a) unless otherwise noted.

2. § 225.20 paragraph (b)(2), lunch or supper meal pattern, and paragraph (b)(3), supplemental food pattern, are amended by revising the requirement for peanut butter and adding other nut and seed butters and nuts and seeds as meat alternates as follows:

§ 225.20 Meal service requirements.

* * * * *

TABLE 2.—LUNCH OR SUPPER

* * * * *

Food Component	Minimum amount
Meat and Meat Alternates	
* * * * *	
Peanut butter, soynut butter, or other nut or seed butters.	4 Tbsp.

* * * * *

TABLE 2.—Continued

Food Component	Minimum amount
or	
Peanuts, soynuts, tree nuts, or seed [5,6].....	1 oz
or	[4]=50%.
an equivalent quantity of any combination of the above meat/meat alternates.	

* * * * * (footnotes will be reorganized in final rule)
[4] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purposes of determining combinations, 1 oz. of nuts or seeds is equal to 1 oz. of cooked lean meat, poultry or fish.
[5] Tree nuts and seeds include nuts and seeds as defined in program guidelines, that are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall *not* be used as meat alternates due to their low protein content.
[6] Nut and seed meals or flours may be used as an ingredient in a bread/bread alternate, but shall *not* be used as a meat alternate except as defined in this section under paragraph (c)(3) and in this part under Appendix A: Alternate Foods for Meals.

TABLE 3.—SUPPLEMENTAL FOOD

* * * * *

Food component	Minimum amount
Meat and Meat Alternates	
* * * * *	
Peanut butter, soynut butter, or other nut or seed butters.	2 Tbsp.
or	
Peanuts, soynuts, tree nuts, or seeds [5,6].....	1 oz.
or	
An equivalent quantity of any combination of the above meat/meat alternates.	

* * * * * (footnotes will be reorganized in final rule)
[5] Tree nuts and seeds include nuts and seeds, as defined in program guidelines, that are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall *not* be used as meat alternates due to their low protein content.
[6] Nut and seed meals or flours may be used as an ingredient in a bread/bread alternate, but *not* as a meat alternate except as defined in this Section under paragraph (c)(3) and in this part under Appendix A: Alternate Foods for Meals.

* * * * *

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 810 and 820, Pub. L 97-35, the Omnibus Reconciliation Act of 1981; sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. In Section 226.20 paragraph (c)(2), lunch or supper pattern, and paragraph (c)(3), supplemental food pattern, are amended by revising the requirement for peanut butter and adding other nut and seed butters and nuts and seeds as meat alternates as follows:

§ 226.20 Requirement for meals

* * * * *

TABLE 4.—LUNCH OR SUPPER

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [1]
MEAT AND MEAT ALTERNATES			
Peanut butter, soynut butter, or other nut or seed butters.....	1 Tbsp [2]=50%.....	1½ Tbsp [2]=50%.....	2 Tbsp [2]=50%.

TABLE 4—Continued

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [4]
or			
Peanuts, soynuts, tree nuts, or seeds [5,6]	½ oz [7] = 50%	¾ oz [7] = 50%	1 oz [7] = 50%.
or			
An equivalent quantity of any combination of the above meat/meat alternates			

* * * (footnotes will be reorganized in final rule)

[7] No more than 50% of the requirement shall be met with nut or seed butters or nuts or seeds. Nut or seed butters or nuts or seeds *shall* be combined with another meat/meat alternate to fulfill the requirement. Exceptions to this requirement are allowed for nut or seed butters to accommodate the service of off-site bag lunches. Nut and seed butters may be used to fulfill all of the requirement when off-site bag lunches are served. For purposes of determining combinations, 2 Tbsp. of nut or seed butters or 1 oz. of nuts or seeds is equivalent to 1 oz. of cooked lean meat, poultry or fish.

[8] Tree nuts and seeds include nuts and seeds, as defined in program guidelines, that are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall *not be* used as meat alternates due to their low protein content.

[9] Nut and seed meals or flours may be used as an ingredient in a bread/bread alternate, but shall *not* be used as a meat alternate except as defined in Appendix A: Alternate Foods for Meals, and in program guidance materials.

TABLE 5.—SUPPLEMENTAL FOOD

* * * * * * *

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [4]
* * * * * * *			
MEAT AND MEAT ALTERNATES			
* * * * * * *			
Peanut butter, soynut butter, or other nut or seed butters	1 Tbsp	1 Tbsp	2 Tbsp
or			
Peanuts, soynuts, tree nuts, or seeds [5,6]	½ oz	½ oz	1 oz.
or			
An equivalent quantity of any combination of the above meat/meat alternates			

* * * (footnotes will be reorganized in final rule)

[7] Tree nuts and seeds include nuts and seeds, as defined in program guidelines, that are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall *not be* used as meat alternates due to their low protein content.

[8] Nut and seed meals or flours may be used as an ingredient in a bread/bread alternate, but shall *not* be used as a meat alternate except as defined in Appendix A: Alternate Foods for Meals, and in program guidance materials.

* * * * *

Dated: December 3, 1985.

John W. Bode,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 85-28961 Filed 12-5-85; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

9 CFR Parts 71 and 80

[Docket No. 85-121]

Paratuberculosis in Domestic Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reopening of comment period for proposed rule.

SUMMARY: This document reopens the comment period for a proposed rule which proposed to remove Federal restrictions on the interstate movement of domestic animals affected with paratuberculosis. This action is needed to allow interested persons adequate time in which to prepare comments.

DATE: Written comments must be received on or before January 6, 1986.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 83-106. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Cattle Diseases Staff, VS, APHIS, USDA, Room 818, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8715.

SUPPLEMENTARY INFORMATION: On September 17, 1985, the Department published in the **Federal Register** (50 FR 37673-37674) a document which proposed to remove the regulations in 9 CFR Part 80, "Paratuberculosis in Domestic Animals," and corresponding regulations in 9 CFR Part 71 and thereby delete Federal restrictions on the interstate movement of domestic animals affected with paratuberculosis.

The proposed rule provided for receipt of comments on or before November 18, 1985. A representative of a veterinary medical association has requested additional time for the association to review the proposal and offer substantive comments. It has been determined that additional time is needed to allow interested persons adequate time in which to prepare comments. Therefore, the comment period is reopened for an additional 30 days. Accordingly, any additional written comments must be received on or before January 6, 1986.

Done at Washington, D.C., this 2d day of December 1985.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-29010 Filed 12-5-85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 556

[No. 85-1024]

Interstate Branching Within the District of Columbia, Maryland, and Virginia Region

Dated: November 15, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to allow federal associations whose home offices are located in the District of Columbia to establish branch offices in either Virginia or Maryland (but not both), subject to certain restrictions. The Board is also proposing reciprocal branching

rights in the District of Columbia for federal associations whose home offices are in Maryland or Virginia.

DATE: Comments must be received by January 6, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Gregory B. Smith, Senior Corporate Attorney, Corporate and Securities Division, Office of the General Counsel, (202) 377-6454; or Joseph A. McKenzie, Financial Economist, Office of Policy and Economic Research, (202) 377-6763.

SUPPLEMENTARY INFORMATION:

Background

Section 5 of the Home Owner's Loan Act of 1933 (12 U.S.C. 1464) grants the Board plenary authority to regulate the operations of federal associations. Pursuant to this authority, the Board has always had the ability to permit and to regulate branching of federal associations on both an interests and interstate basis. *See IBAA* v. *Federal Home Loan Bank Board*, 557 F. Supp. 23 (D.D.C., 1982). However, with the passage of the Garn-St Germain Depository Institution Act of 1982 ("Garn-St Germain Act"), a federal association that fails to qualify as domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1954 or to meet the asset composition test imposed by subparagraph (c) of that section is precluded from operating branch offices outside the state in which the association has its home office. 12 U.S.C. 1464(r) (1982).

The Board has permitted federally chartered associations to branch since 1937, 2 FR 825 (May 14, 1937), although its first policy statement on branching was not adopted unitl 1967, 32 FR 20630 (Dec. 21, 1967). In 1972, the Board amended the policy to emphasize its preference for intrastate operations by stating that the Board generally would not approve applications for branches outside of the home state of the association, 37 FR 3987 (February 25, 1972). Associations that had acquired out-of-state branches before that 1972 amendment generally were grandfathered and allowed to keep those branches. The Board made it clear, however, that it had the discretionary authority to approve the branching of federal associations irrespective of the location of the branch.

The Board has modified its general policy of preference for instrastate branches, however, because of the economic and financial difficulties facing the thrift industry. In order to limit its exposure in dealing with the most severely crippled thrifts, the Federal Savings and Loan Insurance Corporation ("FSLIC") has used interstate supervisory mergers or acquisitions where no suitable in-state aquiror could be found. In response to these changes and in order to codify its procedures, the Board amended its policy statement on branching to specifically authorize interstate operations by federal institutions resulting from supervisory mergers or acquisitions. *See* Board Resolutions Nos. 82-498, 47 FR 34125 (Aug 6, 1982); 81-157, 46 FR 19221 (Mar. 30, 1981); and 81-496, 46 FR 45120 (Sept. 10, 1981). These amendments enabled the FSLIC to draw from a wider range of potential merger partners in supervisory situations if a suitable in-state partner could not be found.

On June 14, 1979, the Board proposed that federal associations with offices in the Washington D.C.-Md.-Va. Standard Metropolitan Statistical Area (SMSA) be permitted to establish and maintain branches throughout the SMSA. *See* Resolution 79-340, 44 FR 36057 (June 20, 1979). The comment period on this regulation was extended twice in Resolutions 79-498, 44 FR 58744 (Oct. 11, 1979) and 81-5, 46 FR 3609 (January 16, 1981). The Board received substantial numbers of comments on that proposal which were approximately evenly divided in their support of that proposal. The primary grounds voiced in opposition were that the suburban areas are already highly competitive and could not support additional branches.

Discussion

The rule now proposed recognizes that the basis for and result of treatment of Washington D.C. as a "state" for branching purposes under § 556.5 may well be inconsistent with the basis for limiting branching by state boundaries in the case of the states. In no other area of the country does the Board restrict the branching activities of a group of institutions to a single city. Since Washington, DC falls in no state, federal associations located in Washington, DC will be allowed to elect one of the two contiguous states in which to establish branches.

Some of the reasons the Board cited for advancing its 1979 proposal were to increase competition, enhance consumer services and enable federal associations based in the District of Columbia to avoid the potentially adverse financial impact of a small geographical market area. Those reasons are even more viable today given the accelerated population growth in the Washington suburban area and declining population growth in the District of Columbia.

The Board is cognizant of the District of Columbia's unique situation. Although it is currently treated like a state for purposes of branching, it differs from any state in comprising only a 61-square-mile wholly urban area surrounded by two contiguous states. Federal associations with home offices in the District of Columbia are effectively precluded from expanding into major parts of the metropolitan area, but federal associations in Maryland and Virginia can branch throughout their respective states.

Now that the deregulation of deposit rates is nearly complete, the actual and potential adverse financial effects of such an extreme demographic constraint upon District of Columbia-based federal associations are clear. While the economy of the District of Columbia is relatively strong, its suburbs are experiencing major income, employment, and population growth. Federal associations with home offices in the District of Columbia must rely upon a very mature, highly competitive, and geographically compact area, with a decreasing population, for their retail savings growth. District of Columbia-based federal associations need such growth in order to offset low-yielding portfolios of mortgages accumulated prior to the deregulation of mortgage and deposit rates.

The Board is also proposing to grant federal associations located in Maryland or Virginia reciprocal rights to establish and maintain branch offices in the District of Columbia. The number of associations doing business in the Deistrict of Columbia has decreased over the last ten years. The resulting increase in competition for deposits and loans should therefore benefit the residents of the District of Columbia.

Current Proposal

The proposed rule pertains only to institutions with a federal charter. The proposed rule would amend the Board's branching policy statement in 12 CFR 556.5 to allow federally chartered institutions (federal savings and loan associations and federal savings banks) whose home offices are in the District of Columbia to establish and maintain branches in non-supervisory transactions in either Maryland or Virginia (but not both). The proposed rule specifies a procedure for a federal association headquartered in the District of Columbia to notify its Supervisory Agent of which of the two states it

selects for branching. The rule would also allow federal assoications whose home offices are in Maryland or Virginia to branch into the District of Columbia in nonsupervisory transactions.

District of Columbia-based federal associations with full branching rights in either Maryland or Virginia acquired pursuant to another provision of the Board's branching policy statement, § 556.5, would not be permitted to branch into the other state pursuant to the branching permitted by the proposal. However, under the proposed rule, District of Columbia-based associations not having full branching rights in Maryland or Virginia but having grandfathered branches in such state acquired prior to the effective date (February 25, 1972) of the Board's general policy, § 556.5(a)(3)(i), prohibiting interstate branching, could retain those grandfathered branches and still establish and maintain branches in the state (either Maryland or Virginia) in which it did not have the grandfathered branches. Moerover, the proposed rule would not affect any existing full branching rights in Virginia and Maryland that a District of Columbia-based federal association had acquired under another provision of the Board's branching policy statement.

The interstate branching rights granted under the proposed rule could not, however, be acquired by an institution not having a home office in Maryland, Virginia or the District of Columbia. Therefore, for example, a Florida-based federal association having full branching rights in Virginia that were acquired in a supervisory transaction under § 556.4(a)(3) (ii) and (iv) would not be entitled to establish and maintain branches in the District of Columbia under the proposed rule. Moreover, that association could not acquire District of Columbia branching rights under the proposed rule by changing its home office to Virginia. Nor, for example, could a Pennsylvania-based federal association acquire full branching rights in the District of Columbia by acquiring, by a supervisory merger, a Virginia-based association that had established branches in the District of Columbia pursuant to the propossed rule. The Pennsylvania-based association could retain, as grandfathered branches, the existing District of Columbia branches it acquired as part of that merger but could not establish additional branches in the District of Columbia. Moreover, it could not acquire branching rights in the District of Columbia by changing its home office to Virginia or the District of Columbia.

The Board has made a preliminanry determination that this proposal would reduce the anomalous treatment of institutions based in the District of Columbia. The proposal also would serve the convenience and needs of consumers in the District of Columbia, Virginia and Maryland, without harming existing institutions in those jurisdictions, by increasing competition in those areas and at the same time reducing the risk to the FSLIC, and by promoting the continued existence of institutions serving the consumers in the District of Columbia in prior to enhance the financial viability of those institutions.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (September 19, 1980), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements have been discussed elsewhere in the supplementary information regarding this proposal.

2. *Small entities to which the rule would apply.* The proposed rule would apply to all federal associations in the affected area regardless of size.

3. *Impact of the proposed rules on small institutions.* The proposed rule would not have a disproportionate effect on small institutions, nor is it expected that the rule will have a significant economic impact on a substantial number of small entities.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap or conflict with the proposal.

5. *Alternatives to the proposed rule.* No alternatives to the proposal would better attain the goals of the proposal without conflict to a greater degree with the Board's long-stated preferences for intrastate branching.

List of Subjects in 12 CFR Part 556

Savings and Loan associations, Branching.

Accordingly, the Federal Home Loan Bank Board proposes to amend Part 556, Subchapter C, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 556—STATEMENTS OF POLICY

1. The authority for Part 556 would continue to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464, Reorg. Plan No. 3 of 1947; 3 CFR, 1943-1948 Comp., unless otherwise noted.

2. Amend § 556.5 by adding new paragraphs (a)(3) (v) and (vi) thereto, as follows:

§ 556.5 Establishment of branch offices.

(a) *General.* * * *

(3) * * *

(v) Notwithstanding paragraph (a)(3)(i) of his section, the Board may approve the establishment of branches in either Maryland or Virginia, but not both, by an association whose home office is located in the District of Columbia; *Provided,* that if the association may branch on a nonsupervisory basis in Maryland or Virginia (excluding any grandfathered branches) under any other paragraph of this section other than (a)(3)(ii), it may not branch into the other state solely pursuant to his paragraph, (a)(3)(v); and *Provided further,* that the association has informed the Supervisory Agent in writing of its chosen state for further branching within 120 days after [effective date of final regulation] or at the time of obtaining its Federal charter and the state selected may not be changed by the association after it has obtained Board approval of a branch in that state; and *Provided further,* that the Board generally will not approve a branch under this paragraph, (a)(3)(v), if the association's eligibility for approval of the branch under this paragraph would result from a change in the location of the association's home office.

(vi) Notwithstanding paragraph (a)(3)(i) of this section, the Board may approve the establishment of branches in the District of Columbia by an association whose home office is located in Maryland or Virginia: *Provided,* that the Board generally will not approve a branch under this paragraph, (a)(3)(vi), if the branch's eligibility for approval under this paragraph would result from a change in the location of the association's home office.

* * * * *

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-29000 Filed 12-5-85; 8:45 am]

BILLING CODE 6720-01-M

12 CFR Part 571

[No. 85-1070]

Federal Savings and Loan Insurance Corporation; Repurchase Agreements and Reverse-Repurchase Agreements

Date: November 22, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing to adopt a formal statement of policy regarding practices and procedures that should be followed by insured institutions that enter into repurchase agreements and reverse-repurchase agreements. The Board's statement of policy essentially would adopt in its entirety the Federal Financial Institutions Examination Council Supervisory Policy on Repurchase Agreements of Depository Institutions with Securities Dealers and Others, which provides quidance and establishes safeguards for depository institutions that enter into repurchase agreements and reverse-repurchase agreements. The Board is proposing to adopt this statement of policy in order to provide guidance to insured institutions for reducing substantially their exposure and that of the FSLIC to losses resulting from imprudent, negligent or fraudulent trading practices by, or failures of, the securities dealer counterparties in repurchase agreements and reverse-repurchase agreements.

DATE: Comments must be received by January 8, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Donna R. Gunther, Assistant Director (202/377-6427), or Julie L. Williams, Associate General Counsel and Director (202/377-6459), Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: During the past several years, a number of dealers engaging exclusively in transactions involving United States government or federal agency securities ("government securities dealers") have failed, resulting in substantial losses to the insured institutions and other entities with which they transacted business.[1] In many cases, these losses allegedly were caused by imprudent, negligent or fraudulent trading practices by the government securities dealers, who where—and continue to be—unregulated by any government agency or self-regulatory body,[2] and by the failure of insured institution to take certain precautions against such trading practices. Despite the widespread publicity accorded the recent failures of certain government securities dealers, numerous insured institutions continue to enter into, on a regular basis, repurchase agreements ("repos") and reverse-repurchase agreements ("reverse repos") with government securities dealers as a means of receiving a high yield on the investment of their earnings and as a resource of low-cost funds for investment or operations.[3] For example, a recent study of this subject conducted by the Board's Offices of Finance, Policy, and Economic Research, and District Banks and the Department of Economic Analysis and Planning of the Federal Home Loan Bank of Chicago indicates that as of year-end 1984, insured institutions comprised nearly 30 percent of the reverse repo market, and their use of reverse repos grew from 1.4 percent of assets as of December 31, 1980, to 4.7 percent as of December 31, 1984. The ratio of reverse repos to total assets of insured institutions constituted 3.4 percent as of June 30, 1985. The Board is concerned about the degree of risk to insured institutions and to the FSLIC should additional government securities dealers fail. Therefore, the Board believes that it is important to provide guidance to insured institutions entering into repos and reverse repos in order that they may reduce substantially their risk of loss and that of the FSLIC resulting from such transactions.

The Federal Financial Institutions Examination Council ("FFIEC"), which is composed of the heads of the Board, National Credit Union Administration, Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation, and a member of the Federal Reserve Board, shares the concerns of the Board in this regard.[4] On October 22, 1985, the FFIEC approved a Supervisory Policy on Repurchase Agreements of Depository Institutions with Securities Dealers and Others ("FFIEC Policy Statement"), which it recommended be adopted by all of its component agencies.[5] The FFIEC stated in its October 22 press release that the FFIEC Policy Statement was developed to help depository institutions avoid adverse consequences that might result from bankruptcies of government securities dealers.The FFIEC Policy

[1] The following major government securities dealers have failed since May 1982, causing total losses of approximately $996 million to the insured institutions and other entities with which they dealt: Drysdale Government Securities, Inc. (May 1982), Comark (June 1982), Lombard-Wall, Inc. (July 1982), Lion Capital Group (May 1984), RTD Securities, Inc. (May 1984), ESM Government Securities, Inc. (March 1985), and Bevill, Bresler & Schulman Asset Management Corp. (April 1985).

[2] The Board is aware that Congress has under consideration several legislative proposals to regulate government securities dealers, however, none have been enacted into law.

[3] A repo is a transaction involving the sale of a security or securities by a counterparty to an insured institution, subject to an agreement by the counterparty to repurchase the securities on a date certain for a specified price, which equals the original purchase price plus a premium or interest at a stipulated rate. From the perspective of the securities dealer counterparty, a repo is considered as a sale of securities subject to a repurchase agreement, and is analogous to a secured borrowing in which the counterparty borrows cash from an insured institution and grants such "lender" a security interest in the securities "sold" by the counterparty to the insured institution. From the perspective of the insured institution, a repo is considered an investment, and is analogous to a cash loan to the counterparty secured by the securities "purchased" by the insured institution from the counterparty.

A reverse repo is essentially the same transaction viewed from a different perspective. A reverse repo is a transaction involving the sale of a security or securities by an insured institution to a counterparty, subject to an agreement by the insured institution to repurchase the identical securities on a date certain for a specified price, which equals the original purchase price plus a premium or interest at a stipulated rate. From the perspective of the securities dealer counterparty, a reverse repo is considered an investment, and is somewhat analogous to a secured loan in which the counterparty loans cash to an insured institution in exchange for a grant to it of a security interest in certain securities held by the institution. From the perspective of the insured institution, a reverse repo is analogous to a sale of securities subject to a repurchase agreement and is considered a secured borrowing in an amount equal to the purchase price of the security or securities. During the term of the reverse repo, the insured institution continues to receive interest payments, and if the securities are mortgage-backed federal agency debt obligations, it also receives principal payments.

The terms repo and reverse repo generally are used to describe transaction from the perspective of the securities dealers participant in the transaction. Thus, for example, while a transaction that constitutes a repo for the dealers is also a reverse repo for the insured institution, it will be described as a repo.

[4] The FFIEC was created under the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. No. 95-630, 92 Stat. 1164 (Nov. 10, 1978), which directed the FFIEC to promote uniformity among the representative agencies with respect to examination and supervisory policies and procedures and to help rationalize the United States' system of supervision of financial institutions.

[5] The Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation and National Credit Union Administration adopted the FFIEC Policy Statement on October 31, 1985, November 1, 1985, November 12, 1985 and November 14, 1985, respectively.

Statement, and, accordingly, Board's proposed statement of policy incorporating it, contain basic safety and soundness guidance for minimizing the credit-risk exposure of depository institutions that engage in repos and reverse repos and for controlling the securities used to collateralize such transactions. In addition, the FFIEC Policy Statement provides for the review of depository institutions' written policies and procedures by the examination staffs of the component agencies of FFIEC to determine the adequacy of such policies and procedures in light of the FFIEC Policy Statement and the scope of each institution's operations.

Specifically, the FFIEC Policy Statement cautions depository institutions to investigate thoroughly and regularly the financial condition and general background and reputation of counterparties and urges depository institutions entering into repos and reverse repos with unregulated government securities dealers to verify that the dealers are in compliance with the Federal Reserve Bank of New York's minimum capital requirements. In addition, the FFIEC Policy Statement advises depository institutions to enter into a written agreement specific to a repo or reverse repo or a master agreement governing all repos and reverse repos with each counterparty and to obtain and compare written confirmations of the transactions. The Policy Statement also emphasizes the importance of implementing safeguards to avoid overcollaterlization and of establishing and maintaining appropriate margin requirements. Finally, the FFIEC Policy Statement addressed position and exposure limits and lending limitations and provides guidance concerning the procedures for obtaining possession or control of the securities underlying repos.

The Board has evaluated the FFIEC Policy Statement in light of its major concerns regarding the repo and reverse repo activity of insured institutions, and believes that the FFIEC Policy Statement would provide sound and effective guidance to insured institutions in minimizing their exposure and that of the FSLIC to losses resulting from imprudent, negligent or fraudulent trading practices by, or failures of, the counterparties in such transactions. The Board, therefore, is proposing to adopt as a formal statement of its policy the FFIEC Policy Statement essentially in its entirety.

The Board also notes that the market encompasses certain other transactions similar to a reverse repo, such as dollar reverse repo, dollar reverse repo with rollover or extension, and rollover of forward commitment to purchase mortgage-backed securities. The Board is proposing at this time to apply the FFIEC Policy Statement to these other transactions, where appropriate. The Board specifically solicits comments regarding the extent to which the FFIEC Policy Statement should apply to these transactions, the risk of loss to insured institutions attendant upon these transactions, and the types of safeguards that should be applicable to institutions that engage in such transactions.

The Board has determined that a 30-day public comment period is appropriate because prompt action is in the public interest. The proposed policy statement would provide much-needed guidance to insured institutions that enter into repos and reverse repos, and would allow the Board to consider implementation of the procedures and safeguards incorporated in the FFIEC Policy Statement as soon as possible, thus reducing substantially their risk of loss and that of the FSLIC.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604 (1982), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed policy statement.* These elements have been discussed elsewhere in the supplementary information regarding the proposed policy statement.

2. *Small entities to which the proposed policy statement would apply.* The proposed policy statement would apply to all insured institutions.

3. *Impact of the proposed policy statement on small institutions.* To the extent that the rules would affect small institutions, this has been discussed elsewhere in the supplementary information regarding the proposed policy statement.

4. Overlapping or conflicting federal rules. There are no federal rules which duplicate, overlap or conflict with the proposed policy statement.

5. *Alternatives to the proposed policy statement.* The Board does not perceive other approaches that would provide the intended regulatory result with a lesser impact on small entities.

List of Subjects in 12 CFR Part 571

Savings and loan associations, Insured institutions.

Accordingly, the Board hereby proposes to amend Part 571, Subchapter D, Chapter V, Title 12 of the *Code of Federal Regulatons*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 571—STATEMENTS OF POLICY

1. The authority for Part 571 continues to read:

Authority: Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730; Reorg. Plan No. 3 of 1947, 3 CFR 1943–48 Comp., p. 1071.

2. Add a new § 571.19 to read as follows:

§ 571.19 Repurchase agreements and reverse-repurchase agreements.

(a) *Scope.* Any insured institution shall be subject to the policies set forth in this section when engaging in repurchase agreements or reverse-repurchase agreements.

(b) *Use of terms.* (1) In order to avoid confusion among market participants who sometimes use the same term to describe different sides of the same transaction, the term "repurchase agreement" will be used in this section to refer to both repurchase and reverse-repurchase agreements. A repurchase agreement is one in which a party that owns securities acquires funds by transferring the securities to another party under an agreement to repurchase the securities at an agreed-upon future date. A reverse-repurchase (resale) agreement is one in which a party provides funds by acquiring securities pursuant to an agreement to resell them at an agreed future date.

(2) The terms "repurchase agreement" and "reverse-repurchase agreement" generally are used to describe transactions from the perspective of the securities dealer counterparty in such transactions. Thus, for example, while a transaction that constitututes a repurchase agreement for the dealer is also a reverse-repurchase agreement for the insured institution, it will be described as a repurchase agreement in this section.

(3) Repurchase agreements generally are discussed in terms of secured credit transactions. This usage should not be deemed to be based upon a legal determination.

(c) *Purpose of policy.* (1) Depository institutions and others involved with the purchase of United States Government and Agency obligations under agreements to resell (known as reverse-repurchase agreements), have sometimes incurred significant losses. The most important factors causing these heavy losses have been inadequate credit-risk management and

the failure to exercise effective control over securities collateralizing the transactions.

(2) This policy addresses the need for managing credit-risk exposure to counterparties under securities repurchase agreements and for controlling the securities in those transactions, and should be followed by insured institutions that enter into repurchase agreements with securities dealers and others.

(3) Insured institutions that actively engage in repurchase agreements are encouraged to have more comprehensive policies and controls to suit their particular circumstances. Examiners and supervisory staff of the Corporation will review written policies and procedures of insured institutions to determine their adequacy in light of the policies set forth in this statement and the scope of each institution's operations.

(d) *Credit policies.* The apparent safety of short-term repurchase agreements which are collateralized by highly liquid U.S. Government and Federal agency obligations has contributed to an attitute of complacency. Some portfolio managers have underestimated the credit risk associated with the performance of the counterparty to the transaction, and have not taken adequate steps to ensure control of the securities covered by the agreement. All insured institutions that engage in securities repurchase agreement transactions should establish written credit policies and procedures governing these activities. At a minimum, those policies and procedures should cover the following:

(1) *Written policies.* (i) Written policies should establish "know you counterparty" principles. Engaging in repurchase-agreement transactions in volume and in large dollar amounts frequently requires the services of a counterparty who is a dealer in the underlying securities. Some firms which deal in the markets for U.S. Government and Federal agency securities are subsidiaries of, or related to, financially stronger and better known firms. However, these stronger firms may be independent of their U.S. Government securities subsidiaries and affiliates and may not be legally obligated to stand behind the transactions of related companies. Without an express guarantee, the stronger firm's financial position cannot be relied upon in assessing the creditworthiness of a counterparty.

(ii) It is important to know the legal entity that is the actual counterparty to each repurchase agreement transaction. An insured institution should know about the actual counterparty's character, integrity of management, activities, and the financial markets in which it deals. Insured institutions should be particularly careful in conducting repurchase agreements with any firm that offers terms that are significantly more favorable than those currently prevailing in the market.

(iii) In certain situations insured institutions may use, or serve as, brokers or finders in order to locate repurchase-agreement counterparties or particular securities. When using or acting as this type of agent, the names of each counterparty should be fully disclosed. Insured institutions should not enter into undisclosed agency or "blind brokerage" repurchase transactions in which the counterparty's name is not disclosed.

(2) *Dealings with unregulated securities dealers.* A dealer in U.S. Government and Federal agency obligations is not necessarily a Federally insured bank or thrift, or a broker/dealer registered with the Securities and Exchange Commission. The dealer firm thus may not be subject to any Federal regulatory oversight. An insured institution doing business with an unregulated securities dealer should be certain that the dealer voluntarily complies with the Federal Reserve Bank of New York's minimum capital requirements, which currently call for liquid capital to exceed measured risk by 20 percent (that is, the ratio of a dealer's liquid capital to risk of 1.2:1). This ratio can be calculated by a dealer using either the Securities and Exchange Commission's Net Capital Rule for Brokers and Dealers (Rule 15c3–1) or the Federal Reserve Bank of New York's Capital Adequacy standard for United States Government Securities Dealers. To ensure that an unregulated dealer complies with either of those capital standards, it should certify its compliance with the capital standard and provide the following three forms of certification:

(i) A letter of certification from the dealer that the dealer will adhere on a continuous basis to the capital adequacy standard;

(ii) Audited financial statements which demonstrates that as of the audit date the dealer was in compliance with the standard and the amount of liquid capital; and

(iii) A copy of a letter from the firm's certified public accountant stating that it found no material weaknesses in the dealer's internal systems and controls incident to adherence to the standard. (This letter should be similar to that which must be given to the Securities and Exchange Commission by registered broker/dealers).

(3) *Periodic evaluations.* (i) Periodic evaluations of counterparty creditworthiness should be conducted by individuals who routinely make credit decisions and who are not involved in the execution of repurchase-agreement transactions. Prior to engaging in initial transactions with a new counterparty an insured institution should obtain audited financial statements and regulatory filings (if any) from its counterparties, and should insist that similar information be provided on a periodic and timely basis in the future. Recent failures of government securities dealers have typically been foreshadowed by delays in producing these statements. Many firms are registered with the Securities and Exchange Commission as broker/dealers and have to file financial statements and should be willing to provide a copy of these filings.

(ii) The counterparty credit analysis should consider the financial statements of the entity that is to be the insured institution's counterparty as well as those of any related companies that could have an impact on the financial condition of the counterparty. When transacting business with a subsidiary, consolidated financial statements of a parent are not adequate. Repurchase agreements should not be entered into with any counterparty that is unwilling to provide complete and timely disclosure of its financial condition. As part of this analysis, the insured institution should make inquiry about the counterparty's general reputation and whether there have been any formal enforcement actions against the counterparty or its affiliates by State or Federal securities regulators.

(4) *Maximum position.* Maximum position and temporary exposure limits for each approved counterparty should be established based upon credit analysis performed. Periodic reviews and updates of those limits are necessary. Individual repurchase-agreement counterparty limits should consider overall exposure to the same or related counterparty in relation to all transactions with the insured institution. Repurchase-agreement counterparty limitations should include the overall permissible dollar positions in repurchase agreements, maximum repurchase-agreement maturities and limits on temporary exposure that may result from decreases in collateral values or delays in receiving collateral.

(5) *Lending limitations.* (i) Insured institutions are subject to regulations in this area pertaining to loans to one

borrower, and federally chartered institutions are subject to certain percentage-of-assets limits on the amount of loans of specified types. State-chartered savings institutions may be subject to state lending restrictions applicable to repurchase transactions.

(ii) Except as otherwise provided in applicable Corporation regulations and State law, it should be assumed that unless the insured institution's interest in securities held as collateral under a repurchase agreement is assured, a repurchase-agreement transaction with any single counterparty will be subject to the lending limitations applicable to that institution. Conversely, the market value of securities sold under a repurchase agreement in excess of the amount of proceeds received by the insured institution could be viewed as an unsecured extension of credit to the repurchase-agreement counterparty subject to the insured institution's lending limits.

(e) *Policies for controlling repurchase-agreement collateral.* Repurchase agreements can be a useful asset and liability management tool, but repurchase agreements can expose an insured institution to serious risks if they are not managed appropriately. It is possible to reduce repurchase-agreement risk if the insured institution negotiates written agreements with all repurchase-agreement counterparties and custodian banks. If prudent management control requirements of repurchase agreements are too burdensome for an insured institution, other asset/liability management tools should be used. The marketplace perceives repurchase-agreement transactions as similar to lending transactions collateralized by highly liquid Government securities. However, experience has shown that the collateral securities will probably *not* serve as protection if the counterparty becomes insolvent or fails, and the purchasing institution does not have control over the securities. This policy statement provides general guidance on the steps insured institutions should take to protect their interest in the securities underlying repurchase-agreement transactions. Ultimate responsibility for establishing adequate procedures does, however, rest with management of the institution. Management should obtain a written legal opinion as to the adequacy of the procedures utilized to establish and protect the insured institution's interest in the underlying collateral.

(1) *General provisions*—(i) *Written agreements.* A written agreement or master agreement governing all repurchase-agreement transactions should be entered into with each counterparty. The written agreement should specify all the terms of the transaction and the duties of both the buyer and seller. Senior managers of insured institutions should consult legal counsel regarding the content of the repurchase and custodial agreements. The repurchase and custodial agreements should specify, but should not be limited to, the following:

(A) Acceptable types and maturities of collateral securities;

(B) Initial acceptable margin for collateral securities of various types and maturities;

(C) Margin maintenance, call, default and sellout provisions;

(D) Rights to interest and principal payments;

(E) Rights to substitute collateral; and

(F) The persons authorized to transact business on behalf of the depository institution and its counterparty.

(ii) *Confirmation.* Some repurchase agreement confirmations may contain terms that attempt to change the insured institution's rights in the transaction. The insured institution should obtain and compare written confirmations for each repurchase-agreement transactions to be certain that the information on the confirmation is consistent with the terms of the agreement. The confirmation should identify specific collateral securities.

(iii) *Control of Securities.* (A) As a general rule, an insured institution should obtain possession or control of the underlying securities and take necessary steps to protect its interest in the securities. The legal steps necessary to protect its interests may vary with applicable facts and law and accordingly should be undertaken with the advice of counsel. Additional prudential management controls may include:

(*1*) Direct delivery of physical securities to the institution, or of book-entry securities by appropriate entry in a account maintained in the name of the insured institution by a Federal Reserve Bank which maintains a book-entry system for U.S. Treasury securities and certain agency obligations (for further information as to the procedures to be followed, contract the Federal Reserve Bank for the District in which the insured institution is located);

(*2*) delivery of either physical securities to, or, in the case of book-entry securities, making appropriate entries in the books of a third-party custodian designated by the insured institution under a written custodial agreement which explicitly recognizes the insured institution's interest in the securities as superior to that of any other person; or

(*3*) appropriate entries on the books of a third-party custodian acting pursuant to a tripartite agreement with the insured institution and the counterparty, ensuring adequate segregation and identification of either physical or book-entry securities.

(B) Where control of the underlying securities is not established, the insured institution may be regarded only as an unsecured general creditor of the insolvent counterparty. In such instance, *substantial losses are likely to be incurred.* Accordingly, an insured institution should not enter into a repurchase agreement without obtaining control of the securities unless at least the following procedures are observed: (*1*) The institution is completely satisfied as to the creditworthiness of the counterparty; (*2*) the transaction is within credit limitations that have been pre-approved by the board of directors or a committee of the board for unsecured transactions with the counterparty; (*3*) periodic credit evaluations of the counterparty are conducted; and (*4*) the insured institution has ascertained that collateral segregation procedures of the counterparty are adequate. Unless prudent internal procedures of these types are instituted and observed, the insured institution may be cited by examiners and supervisory staff of the Corporation for engaging in unsafe or unsound practices.

(C) All receipts and deliveries of either physical or book-entry securities should be made according to written procedures, and third-party deliveries should be confirmed in writing directly by the custodian. It is not acceptable to receive confirmation from the counterparty that the securities are segregated in an insured institution's name with a custodian; the insured institution should obtain a copy of the advice of the counterparty to the custodian requesting transfer of the securities to the insured institution. Where securities are to be delivered, payment for securities should not be made until the securities are actually delivered to the insured institution or its agent. The custodial contract should provide that the custodian takes delivery of the securities subject to the exclusive direction of the insured institution.

(D) Substitution of securities should not be allowed without the prior consent of the insured institution. The insured institution should give its consent before the delivery of the substitute securities to it or a third-party custodian. Any

substitution of securities should take into consideration "margin requirements" pursuant to paragraph (e)(2) of this section.

(2) *Margin requirements.* (i) The amount paid by an insured institution under the repurchase agreement should be less than the market value of the securities, including the amount of any accrued interest, with the difference representing a predetermined margin. Factors to be considered in establishing an appropriate margin include the size and maturity of the repurchase transaction, the type and maturity of the underlying securities, and the creditworthiness of the counterparty. Margin requirements on U.S. Government and Federal agency obligations underlying repurchase agreements should allow for the anticipated price volatility of the security until the maturity of the repurchase agreement. Less marketable securities may require additional margin to compensate for less liquid market conditions. Written repurchase-agreement policies and procedures should require daily marking to market. Repurchase agreements should provide for additional securities or cash to be placed with the insured institution or its custodian bank to maintain the margin within the predetermined level.

(ii) Margin calculations should also consider accrued interest on underlying securities and the anticipated amount of accrued interest over the term of the repurchase agreement, the date of interest paryment and which party is entitled to receive the payment. In the case of pass-through securities, anticipated principal reductions should also be considered when determining margin adequacy.

(3) *Management procedures.* Prudent management procedures should be followed in the administration of any repurchase agreement. Longer term repurchase agreements require management's daily attention to the effects of securities substitutions, margin maintenance requirements (including consideration of any coupon interest or principal payments) and possible changes in the financial condition of the counterparty. Engaging in open repurchase-agreement transactions without maturity dates may be regarded as an unsafe and unsound practice unless the insured institution has retained rights to terminate the transaction quickly to protect itself against changed circumstances. Similarly, automatic renewal of short-term repurchase-agreement transactions without reviewing collateral values and adjusting collateral margin may be regarded as an unsafe and unsound practice. If additional margin is not deposited when required, the insured institution's right to sell securities or otherwise liquidate the repurchase agreement should be exercised without hesitation.

(4) *Overcollateralization.* An insured institution should use current market values, including the amount of any accrued interest, to determine the price of securities that are sold under repurchase agreements. Counterparties should not be provided with excessive margin. Thus, the written repurchase-agreement contract should provide that the counterparty must make additional payment or return securities if the margin exceeds agreed-upon levels. When acquiring funds under repurchase agreements, it is prudent business practice to keep at a reasonable margin the difference between the market value of the securities delivered to the counterparty and the amount borrowed. The excess market value of securities sold by an insured institution may be viewed as an unsecured loan to the counterparty subject to the unsecured prudential limitations for the insured institution and treated accordingly for credit policy and control purposes.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-29001 Filed 12-5-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-121-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The notice proposes to adopt an airworthiness directive (AD), applicable to certain Boeing Model 747 airplanes, that would require inspection and replacement, if necessary, of the outboard engine strut aft diagonal brace, and modification of the firewall openings in the strut lower aft bulkhead. The proposed AD is prompted by recent reports of overheating and cracking of the forward lug end of the aft diagonal brace. This condition, if not corrected, could result in separation of an engine from the airplane .

DATE: Comments must be received on or before January 28, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-121-AD, 17900 Pacific Highway South, C-68966, Seattle Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments recieved. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (PRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-121-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Two operators have reported finding overheating of the outboard strut aft diagonal brace forward end on Boeing Model 747 series airplanes equipped with General Electric CF6–50 engines. The overheating was caused by impingement on the brace of heated turbine case cooling air passing through three small opening in the strut side cowl skirt and the lower aft torque bulkhead below the firewall. This overheating could lead to failure of the forward lug of a pylon aft diagonal brace, which could result in separation of the engine. Airplanes powered with Pratt and Whitney JT9D–70A engines also have this same desing and would be susceptible to similar failures.

Boeing has issued Service Bulletin 747–54A2117, which defines the specific inspection procedures to be used to check for overheating of the outboard engine strut aft diagonal brace forward end, describes the means of repair of damaged braces, and describes a preventive modification to the firewall on certain Boeing Model 747 series airplanes.

Since this condition is likely to exist or develop in other airplanes of the same type design, an AD is proposed that would require inspection, and repair or replacement, as necessary, of the outboard engine strut aft diagonal brace, and modification of firewall openings on certain Boeing Model 747 series airplanes, in accordance with the Boeing Service Bulletin 747–54A2117, Revision 1, or later FAA-approved revisions.

It is estimated that 11 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $3,520 for the initial inspection cycle.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97.449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes equipped with General Electric CF6–50 and Pratt and Whitney JT9D–70A engines, listed in Boeing Service Bulletin 747–54A2117, Revision 1, certificated in any category. To prevent failure of the outboard engine strut aft diagonal brace, accomplish the following, unless already accomplished:

A. Within the next 200 landings after the effective date of this AD, perform an eddy current conductivity test of the strut diagonal brace to determine its heat treat temper condition, perform a close visual (detailed) inspection of the strut diagonal brace for cracking, and install sealant backup plates and heat resistant sealant over the firewall openings in the strut lower aft bulkhead, in accordance with Boeing Service Bulletin 747–54A2117, Revision 1, later FAA-approved revisions.

Note:—Definition of close visual (detailed) inspection method: Close intensive visual inspections of highly defined structural details or locations searching for evidence of structural irregularity. Using adequate lighting and, where necessary, inspection aids such as mirrors, etc., surface cleaning and access procedures may be required to gain proximity.

B. If the strut diagonal brace conductivity readings indicate an acceptable brace, as defined by Boeing Service Bulletin 747–54A2117, Revision 1, or later FAA-approved revisions, and no cracks are found, no further action is required relative to the diagonal brace. NOTE: Compliance with this AD does not terminate the inspection requirements of the Supplemental Structural Inspection Document (SSID) Airworthiness Directive AD 84–21–02, Amdt. 39–4936, if applicable.

C. If the strut diagonal brace conductivity readings indicate a possible unacceptable brace, and no cracks are found, visually reinspect the brace lugs for cracks at intervals not to exceed 200 landings until the actions required by paragraph D. of this AD are accomplished.

D. If the strut diagonal brace conductivity readings indicate a possible unacceptable brace, and no cracks are found, accomplish the strut diagonal brace strength verification and any necessary corrective action, in accordance with Boeing Service Bulletin 747–54A2117, Revision 1, or later FFA-approved revisions, as follows:

1. Within 2,000 landings for airplanes that have accumulated les than 3,000 landings;

2. Within 1,500 landings for airplanes that have accumulated 3,000 to 6,000 landings; and

3. Within 1,000 landings for airplanes that have accumulated over 6,000 landings.

E. Cracked parts must be replaced prior to further flight.

F. Upon the request of an operator, an FAA Principal Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an eatablished inspection period of that operator, if the request contains substantiating data to justify the change for that operator.

G. Alternate means of compliance which provide an acceptable level of safety may be used approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

H. Special Flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 29, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–28923 Filed 12–5–85; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 85–NM–139–AD]

Airworthiness Directives; Gates Learjet Models 24D, 24D–A, 24E, 24F, 24F–A, 25, 25B, 25C, 25D, 25F, 28, 29, 35, 35A, 36, and 36A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD) which requires repetitive inspections of the battery and battery vent system on certain Gates Learjet airplanes. This proposed amendment

would require relocation of the battery vent inlet, which is necessary to eliminate the potential for a fire and explosion within the battery, caused by leaking fuel entering the battery inlet vent.

DATE: Comments must be received on or before January 28, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-139-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The service bulletins specified in this notice may be obtained upon request to the Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas, 67277. This information may be examined at the FAA, Central Region, Wichita Aircraft Certfication Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, or FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of the proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-139-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

Discussion

Airworthiness Directive (AD) 85-22-04, Amendment 39-5161 (50 FR 43565; October 28, 1985) was issued as an immediately adopted rule to require immediate inspection of the batteries and associated vent systems, and the replacement of leaking jiffy drains, on certain Gates Learjet airplanes. Issuance of the AD was prompted by a report that an operator of a Gates Learjet Model 36 airplane had discovered approximately one cup of fuel in a battery while conducting a deep cycle inspection of a nickel cadmium battery. This condition, if not corrected, could create the potential for a fire and explosion within the battery, and a hazard to the airplane's occupants.

Gates Learjet Corporation has issued Service Bulletins (SB) 24/25-334A (for Models 24 and 25 series airplanes), SB 28/29-24-5A (for Models 28 and 29 series airplanes), and SB 35/36-24-10 (for Models 35 and 35 series airplanes), dated July 18, 1985, which provide instructions for the relocation of the battery vent inlet from the bottom of the airplane to the side of the airplane. The relocation of the battery vent inlet will prevent the entry of fuel into the battery case and eliminate the potential for a fire and explosion within the battery.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD would require the relocation of the battery vent inlet, in accordance with the Gates Learjet Service Bulletins previously mentioned. This proposed AD would supersede AD 85-22-04 by requiring a modification in lieu of repetitive inspections.

Approximately 577 airplanes of U.S. registry would be affected by this AD. The modification would require approximately 13.5 manhours to accomplish, at an average labor charge of $40 per manhour. Existing hardware and components are utilized for vent relocation; therefore, no part cost is anticipated. Based on these figures, the total impact of this AD on U.S. operators would be $311,580.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); it is further certified under the criteria of the Regulatory Flexibility Act that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Gates Learjet Model 24, 25, 28, 29, 35, or 36 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

2. By superseding AD 85-22-04, Amdt. 39-5161 (50 FR 43565; October 28, 1985), with the following new airworthiness directive:

Gates Learjet Corporation: Applies to the following Gates Learjet Models and serial numbers:

Models	Serial Nos.
24D, 24D-A, 24E, 24F, 24F-A	24-218, 24-230 thru 24-357.
25, 25B, 25C, 25D, 25F	25-059, 25-061 and 25-066 thru 25-373.
28	28-001 thru 28-005.
29	29-001 thru 29-004.
35, 35A	35-001 thru 35-570 and 35-589 thru 35-600.
36, 36A	36-001 thru 36-053 and 36-055.

Compliance is required as indicated in the body of the AD.

To eliminate the potential for a fire and explosion within the battery, caused by leaking fuel entering the battery vent, accomplish the following within the next 200 flight hours, unless already accomplished:

A. Relocate the battery vent inlet in accordance with instructions contained in the Gates Learjet Corporation Service Bulletin (SB) 24/25-334A (for Models 24 and 25 series airplanes), SB 28/29-24-5A (for Models 28 and 29 series airplanes), or SB 35/36-24-10 (for Models 35 and 36 series airplanes), dated July 18, 1985, or later FAA-aproved revisions.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the modification requirements of this AD.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this proposal who have not already received the applicable

service bulletins from the manufacturer may obtain copies upon request to Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. These documents may be examined at FAA, Central Region, Wichita, Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, or at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

Issued in Seattle, Washington, on November 29, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-28922 Filed 12-5-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 84N-0113]

Sulfiting Agents; Labelling in Drugs for Human Use; Warning Statement

Correction

In Fr Doc. 85-27472, beginning on page 47558 in the issue of Tuesday, November 19, 1985, make the following correction: On page 47562, third column, eighteenth line from the bottom of the page, "21 CFR 311.166" should read "21 CFR 211.166"

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-10-FRL—2935-8]

Oregon; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of Oregon for Final Authorization, Public Hearing and Public Comment Period.

SUMMARY: Oregon has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Oregon's application and has made the tentative decision that Oregon's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to the State to operate its program in lieu of the Federal program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616 November 8, 1984). Oregon's application for final authorization is available for public review and comment. A public hearing will be held to solicit comments on the application if significant public interest is expressed.

DATES: If sufficient interest is expressed, a public hearing will be held on January 7, 1986, at 10:00 a.m. at the Portland Building, Portland, Oregon. The Oregon Department of Environmental Quality will be represented at the hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA, by telephone or in writing, by December 30, 1985. EPA will determine by January 2, 1986, whether a public hearing will be held. All written comments on the State's final authorization application must be received by EPA by the close of business on January 7, 1986.

ADDRESSES: Copies of Oregon's final authorization application are available during business hours at the following addresses for inspection and copying: U.S. EPA Oregon Operations Office, 522 SW. Fifth Avenue, Portland, Oregon, (503) 221-3250; Oregon Department of Environmental Quality, 522 SW. Fifth Avenue, Portland Oregon, (503) 229-5254; U.S. EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington, (206) 442-1259; U.S. EPA Headquarters Library, 401 M Street, SW., Washington DC, (202) 382-5926.

Written comments on the tentative determination and the application, and written or telephone communication expressing interest in holding a public hearing on the Oregon application must be directed to David Hanline, Mail Stop 530, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA, 98101, (206) 442-2858 or (FTS) 399-2858.

If sufficient public interest is expressed, U.S. EPA will hold a public hearing on Oregon's application for final authorization at 10:00 a.m. on January 7, 1986, in the Portland Building, Meeting Room C, 1120 SW. Fifth Avenue, Portland, Oregon.

If you wish to find out whether or not U.S. EPA will hold a public hearing on the tentative determination and the Oregon application, based on U.S. EPA's decision that there was sufficient interest in such a hearing, write or telephone the U.S. EPA contact person listed below on or after January 2, 1986.

FOR FURTHER INFORMATION CONTACT: David Hanline, Mail Stop 530, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-2858 or (FTS) 399-2858. To determine whether a public hearing will be held, contact either David Hanline; or Michael Gearheard, U.S. EPA Oregon Operations Office, 522 SW. Fifth Avenue, Portland, Oregon, (503) 221-5250.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allow EPA to authorize State hazardous waste programs to operate in those States in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization" is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6926(c)). EPA's implementing regulations at 40 CFR 271.121-271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260-263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities), and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase IIA covers general permitting procedures and technical standards for containers and tanks and, in some cases, certain surface impoundments and waste piles. Phase IIB covers incinerator facilities. Phase IIC addresses landfills, land treatment facilities, surface impoundments, and waste piles. By statute, all interim authorizations expire on January 31, 1986. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received final authorization, as described below.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations to qualify for final authorization appear at 40 CFR 271.1-271.23.

B. Oregon

The State of Oregon received interim authorization for Phase I on July 16, 1981. The State did not apply for Phase II, but has participated with EPA in implementation of this aspect of the program through a Cooperative Arrangement.

In November of 1983, the State of Oregon submitted a draft application for final authorization. EPA made comments to the State for their consideration in completing the application. The State provided for public comment on the application and held a hearing on May 29, 1984. The application for final authorization of the Oregon hazardous waste program was submitted on June 1, 1984. At that time, EPA requested clarification from the State on several aspects of its application. Of principal concern to EPA, the State had not yet demonstrated that requirements equivalent to the Federal interim status standards were applicable to all facilities which had not yet been issued RCRA permits. Furthermore, the State's compliance and enforcement programs were not discussed in sufficient detail. In addition, the State's program included a statutory provision requiring that five-days notice be given prior to assessment of civil penalties. With this provision, the State was not able to demonstrate that penalties could be assessed for all violations of hazardous waste requirements.

The State has addressed these concerns through addenda to the application submitted to EPA on August 30, 1985. In addition, minor changes in the Memorandum of Agreement are being made by the State, and will be completed prior to EPA's final determination on the authorization application.

In addition to reviewing the application, EPA evaluated the State's capability to implement an equivalent hazardous waste program. To this end, detailed reviews of the State's implementation efforts were conducted in July of 1984, and again in September of 1985. These reviews focused on key aspects of the program, including compliance, enforcement, and permitting activities. The earlier review, finding several significant deficiencies in the State's efforts, resulted in a decision that EPA would delay action on the application. The second review found that the State has been responsive to the recommendations that EPA has made in the course of the earlier review, and noted significant improvements in the quality of the State's program. Furthermore, EPA and the State have agreed to jointly execute a post-authorization Letter of Intent to ensure the maintenance and enhancement of hazardous waste program implementation efforts in the State.

EPA has tentatively determined that the State's program meets all of the requirements necessary to qualify for final authorization, and intends to grant final authorization to Oregon to operate its program in lieu of the Federal regulatory program promulgated through April 30, 1985, pursuant to RCRA, 42 U.S.C. 6901 et seq.

In accordance with section 3006 of RCRA and 40 CFR 271.20(d), EPA will hold a public hearing on its tentative decision if sufficient public interest in this decision is expressed. A hearing is scheduled for January 7, 1986, at 10:00 a.m., in Meeting Room C of the Portland Building, 1120 S.W. Fifth Avenue, Portland, Oregon. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA, by telephone or in writing, by December 30, 1985. EPA will determine by January 2, 1985, whether a public hearing will be held. The public may also submit written comments on EPA's tentative determination until the close of business on January 7, 1986.

In making its final decision, EPA will consider all public comments on the tentative determination. Issues raised by comments may be a basis to deny final authorization to Oregon. EPA expects to make its decision on whether or not to grant final authorization by January 31, 1986, and will publish a notice of the decision in the Federal Register. The notice will include summaries of and responses to all major comments.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent requirements within specified timeframes. However, until new Federal requirements were actually adopted by the State, they did not take effect in the authorized State.

In contrast, under the recently enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time they take effect in States whose programs are not authorized. Furthermore, EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions, the HSWA requirements apply in authorized States in the interim.

Thus, as a result of the HSWA, there will be dual State/Federal regulatory program in Oregon after final authorization. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. To the extent that HSWA-related requirements are in effect in Oregon, EPA will administer and enforce those requirements until the State applies for and receives authorization to do so. Among other things, this may entail issuance of Federal RCRA permits for those aspects of the State program which have not yet been authorized.

This authorization of Oregon's hazardous waste program includes two Federal regulatory promulgations pursuant to the HSWA—the listing of dioxin-containing wastes (50 FR 1978), and the paint filter liquids test (50 FR 18370). Once Oregon is authorized to implement other HSWA requirements or prohibitions, the State program in those areas will operate in lieu of the Federal provisions. Until that time, the State may assist EPA in the implementation of such requirements through a cooperative arrangement. Any State requirement that is more stringent than a HSWA provision remains in effect. In such a case, regulated handlers must comply with the more stringent State requirement.

Oregon has not asserted jurisdiction to implement the hazardous waste program on Indian lands within the State. Such authority would therefore remain with EPA.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Oregon's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance with Executive Order 12291

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

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

List of Subjects of 40 CFR Part 271

Administrative practices and procedures, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping, Water pollution control, Water supply.

Dated: November 15, 1985.

L. Edwin Coate,

Acting, Regional Administrator.

[FR Doc. 85-29120 Filed 12-5-85; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 271

[SW-10-FRL-2935-9]

Washington; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of Washington for Final Authorization, Public Hearing and Public Comment Period.

SUMMARY: Washington has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Washington's application and has made the tentative decision that Washington's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. EPA intends to grant final authorization to the State to operate its program in lieu of the Federal program subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616 November 8, 1984) (HSWA). Washington's application for final authorization is available for public review and comment and a public hearing will be held to solicit comments on the application if significant public interest is expressed.

DATES: If sufficient public interest is expressed in holding a hearing, a public hearing is scheduled for January 6, 1986, at 10:00 a.m. Washington will participate in the public hearing held by EPA on this subject if held. EPA reserves the right to cancel the public hearing if sufficient public interest in holding a hearing is not communicated to EPA by telephone or in writing by December 27, 1985. EPA will determine by December 31, 1985, whether there is sufficient public interest to hold a public hearing. All written comments on the State's final authorization application must be received by EPA by the close of business on January 6, 1986.

ADDRESSES: Copies of Washington's final authorization application are available during business hours at the following addresses for inspection and copying: Washington Department of Ecology (Rowesix), 4224 6th Avenue S.E., Bldg. 4, Olympia, Washington 98504, Ross Potter, (206) 459-6303; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, Phone: (202) 382-5926; U.S. EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101, Phone: (206) 442-1259.

Written comments on the tentative determination and the application, and written or telephone communication of interest in holding a public hearing on the Washington application must be sent to Michael Bussell, Mail Stop 530, 1200 Sixth Avenue, Seattle, WA, 98101, (206) 442-2857 or (FTS) 399-2857.

If sufficient public interest is expressed, U.S. EPA will hold a public hearing on Washington's application for final authorization at 10:00 a.m. on January 6, 1986, in Conference Room 12A of the EPA Region 10 offices at 1200 Sixth Avenue, Seattle, Washington.

If you wish to find out whether or not U.S. EPA will hold a public hearing on the tentative determination and the Washington application, based on U.S. EPA's decision that there was sufficient interest in such a hearing, write or telephone the U.S. EPA contact person listed below after December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Michael A. Bussell, Mail Stop 530, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-2857 or (FTS) 399-2857.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization" is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program [section 3006(c), 42 U.S.C. 6926]. EPA's implementing regulations at 40 CFR Parts 271.121-271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260-263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards of interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase IIA covers general permitting procedures and technical standards for containers and tanks and in some cases certain surface impoundments and waste piles. Phase IIb covers incinerator facilites. Phase IIC addresses landfills, land treatment facilities, surface impoundments and waste piles. By statute, all interim authorizations expire on January 31, 1986. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received final authorization.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement [section 3006(b), 42 U.S.C. 6926]. States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations to qualify for final authorization appear at 40 CFR 271.1-271.23.

B. Washington

The State of Washington received interim authorization on August 2, 1983, for Phase I and Phase IIA and IIB. The State did not seek interim authorization for the land disposal permitting component (Phase IIC) and has participated in this aspect of the program with EPA under a Cooperative Arrangement.

The State of Washington submitted a draft application for final authorization on Jaunary 17, 1984. EPA comments were made to the State for their consideration in completing the application. Public hearings to solicit comments were held by Washington on June 5, 6, and 11, 1984. The application for final authorization of the Washington hazardous waste

management program was received by EPA on July 2, 1984. After reviewing the State's application, EPA commented to the State requesting clarification concerning several aspects of its application and program, including:

1. Basis of statutory authority to regulate recycled wastes, waste generators, disposal of dangerous waste, and to establish a permit program.

2. Applicability of the interim status standards to certain operations.

3. Staffing for the program, compliance monitoring program enhancements, enforcement practices and policy, permit processing timeframes, and delegation of authority within the Washington Department of Ecology to implement regulatory actions required of the Department.

4. Memorandum of agreement provisions regarding Federal oversight and Federal/State coordination in permitting, compliance and enforcement.

EPA comments are set forth in letters to the State dated July 27, 1984, and May 8, 1985. With the exception of some needed clarifying language on EPA responsibilities under HSWA, and some minor clarifications in the Memorandum of Agreement (MOA), the State has addressed these comments to EPA's satisfaction in subsequent addenda to the application submitted to EPA on September 24, 1984, July 11, 1985, and September 27, 1985, which are in the public record. The State will make the additional changes in the application, prior to EPA's final decision on program approval/denial.

In addition to evaluating the State's application, EPA has also evaluated the State's implementation of their program, particularly in key priority areas—compliance, enforcement and permitting—as part of an assessment of State capabilities to implement a quality program after authorization. As part of this process, EPA Region 10 conducted program reviews of Washington's hazardous waste management program in August 1984 and September 1985. The 1984 program review found a number of problems in the implementation of the State's compliance, enforcement and permitting programs, such that a decision on final authorization was delayed. The 1985 program review found that the State has been and is continuing to be responsive to EPA's program implementation recommendations, and has demonstrated substantial progress in the implementation of their compliance monitoring, enforcement and permitting programs. To address the need of further enhancement of State capabilities in these areas, the State and EPA have agreed to jointly sign a Letter of Intent that will explicitly address State and EPA measures to assure continued enhancement of State capabilities in compliance, enforcement and permitting. This Letter of Intent will be signed by the State and EPA prior to EPA's final decision on program approval/denial.

EPA has tentatively determined that the State's program meets all of the requirements necessary to qualify for final authorization and intends to grant final authorization to Washington to operate its program in lieu of the Federal regulatory program promulgated up to December 31, 1984, pursuant to RCRA, 42 U.S.C. 6901 et seq., (not including requirements and prohibitions imposed by the HSWA).

In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative decision on January 6, 1986, at 10:00 a.m. at EPA Region 10 Conference Room 12A, 1200 Sixth Avenue, Seattle, Washington, if sufficient public interest is expressed in holding a hearing. The public may submit written comments on EPA's tentative determination until close of business on January 6, 1986. Copies of Washington's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

In making its final decision, EPA will consider all public comments on the tentative determination. Issues raised by those comments may be the basis for a decision to deny final authorization to Washington. EPA expects to make its final determination on whether or not to approve the State's program by January 31, 1986. The notice will be published in the **Federal Register** and will include a response to all major comments.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. However, until new Federal requirements were adopted as State law, they did not take effect in the authorized State.

In contrast, under the newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time they take effect in non-authorized States. EPA is directed to cary out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. Thus, while States must still adopt HSWA related provisions, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Washington after final authorization. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. To the extent HSWA related requirements are in effect, EPA will administer and enforce those portions of the HSWA in Washington until the State receives authorization to do so. Among other things, this may entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once Washington is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time, the State may assist the EPA's implementation of the HSWA under a Cooperative Agreement, as State resources allow.

Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, regulated handlers must comply with the more stringent State requirements. Washington is not being authorized for any requirement implementing the HSWA.

C. Indian Lands

In the final authorization application, the State has asserted authority and intent to regulate hazardous waste management activities on Indian lands. The State also asserted such authority in its interim authorization application. For interim authorization, EPA concluded that the State had not adequately demonstrated it had such authority. In granting interim authorization, EPA therefore retained jurisdiction for regulating hazardous waste management activities on Indian lands. The State appealed this decision to the Ninth Circuit Court of Appeals; the Ninth Circuit upheld EPA's decision [Department of Ecology, v. EPA, 752 F. 2d 1465 (1985)]. Based on the Court's decision, the State amended their application to focus their assertion of authority to cover non-Indian hazardous waste management activities on Indian lands. We conclude however, that the State's demonstration of jurisdiction is insufficient for EPA to authorize non-Indian hazardous waste management activities on Indian lands. EPA will therefore retain jurisdiction for regulation of hazardous waste

management activities on Indian lands. EPA views "Indian lands" to mean all lands (including fee lands) within Indian reservations, dependent Indian communities, and Indian allotments to which Indians hold title.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Washington's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

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

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, and 6974.

List of Subjects in 40 CFR Part 271

Administrative practices and procedures, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping, Water pollution control, Water supply.

Dated: November 15, 1985.

L. Edwin Coate,

Acting Regional Administrator.

[FR Doc. 85-29119 Filed 12-5-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA-6690]

Proposed Flood Elevation Determinations; Arkansas et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Fort Smith (city), Sebastian County	
Arkansas River:	
Downstream corporate limits	*406
Downstream of Interstate Route 540	*410
Upstream corporate limits	*417
Massard Creek:	
Confluence with Arkansas River	*406
Upstream of South 83rd Street	*414
Upstream corporate limits	*423
Little Massard Creek:	
Confluence with Massard Creek	*406
Upstream of South 91st Street	*410
Upstream of Massard Road	*419
Upstream of South 74th Street	*425
Upstream of South Louisville	*432
Spivey Creek:	
Confluence with Massard Creek	*414
Upstream of Beiker Road	*435
Upstream of Missouri Pacific Railroad	*441
Sunnymede Creek:	
Confluence with Arkansas River	*409
Upstream of Waldron Road	*413
Upstream of Albert Pike Avenue	*423
Upstream of Birine Avenue	*436
No Name Creek:	
Confluence with Sunnymede Creek	*409
River mile 0.45	*419
Upstream of Interstate Route 540	*429
Upstream of Free Ferry Road	*448
Upstream of Duncan Road	*465
Downstream of Euper Lane	*482
River miles 2.62	*511
No Name Tributary:	
Confluence with No Name Creek	*460
Upstream of Rogers Avenue	*482
River mile 0.719	*505
Oak Park Tributary:	
Confluence with Arkansas River	*412
Upstream of Newton Road	*417
River mile 0.951	*424
May Branch:	
Confluence with Arkansas River	*416
Upstream of North L Street	*432
Upstream of Ballman Road	*462

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Poteau River:	
Confluence with Arkansas River	*417
Confluence of Mill Creek	*418
Mill Creek:	
Confluence with Poteau River	*418
Upstream of Towson Avenue	*439
Upstream of State Route 59	*456
Upstream of Cavanaugh Road	*476
Upstream of Jenny Lind Road	*489
River miles 6.82	*516
Mill Creek Tributary:	
Confluence with Mill Creek	*454
Upstream of Missouri Pacific Railroad	*468
Upstream of Vicksburg Street	*475
Upstream of Tulsa Street	*490

Maps available for inspection at 623 Garrison, Fort Smith, Arkansas. Send comments to Honorable Bill Vines, Mayor of the city of Fort Smith, Sebastian County, P.O. Box 1908, Fort Smith, Arkansas 72902.

Lavaca (city), Sebastian County

Cox Creek:	
Downstream corporate limits	*401
Downstream side of North Davis Street	*406

Maps available for inspection at the City Hall, Main Street, Lavaca, Arkansas. Send comments to Honorable Lloyd Farrar, Mayor of the city of Lavaca, Sebastian County, P.O. Box 3, Lavaca, Arkansas 72940.

CALIFORNIA

Kern County (unincorporated areas)

Antelope Creek: Approximately 75 feet downstream from the center of State Highway 202	*3,899
Blackburn Creek: 70 feet upstream from the confluence of Antelope Creek	*3,903
Boron Avenue Creek (shallow flooding): Approximately 185 feet upstream from the center of Bellaire Avenue	*2,466
Breckenridge (shallow flooding): Approximately 250 feet southeast along Atchison, Topeka + Santa Fe Railroad from the center of Morning Drive	*456
Caliente Creek: At the crossing of Atchison, Topeka + Santa Fe and Southern Pacific Railroad over Caliente Bodfish Road	*1,314
Caliente Creek (shallow flooding): Approximately 300 feet south along Rock Pile Road from its intersection with Mountain View Road	*630
Calvert Wash (shallow flooding): Approximately 600 feet upstream from the center of Pusher Street	*2,400
Claymine Wash (shallow flooding): Approximately 150 feet south on Granada Street from its intersection with Glendower Avenue	*2,296
Cuddy Creek: Approximately 60 feet downstream from the center of Border Street	*5,111
Erskine Creek: At the center of Lake Isabella Boulevard and Erskine Creek	*2,462
Grapevine Canyon Creek (shallow flooding): At the center of the intersection of Heather Avenue and Avenida Del Sol	#2
Indian Wells Canyon Creek (shallow flooding): At the center of the intersection of Sierra Vista Street and Three Pines Canyon Avenue	#3
Jawbone Canyon Wash: Approximately 30 feet downstream from center of Neuralia Road	*2,017
Kelso Creek: Approximately 150 feet upstream from the center of Kelso Valley Road	*2,924
Kern River at Bakersfield: Approximately 150 feet east along River Road from its intersection with Elk Road	*481
Kern River at Kernsville: Approximately 100 feet upstream from the center of Kernville Road	*2,644
Little Dixie Wash: Approximately 100 feet upstream from the center of Ward Street	*2,427
North El Paso Wash (shallow flooding): At the center of Thorn Street and North El Paso Wash	*2,408
North Ridgecrest Wash (shallow flooding): At the center of the intersection of Campbell Road and Felspar Avenue (Hallchrist Avenue)	*2,356

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Poso Creek: Approximately 100 feet upstream from the center of Zerker Road	*475
Ranger Station Creek: Approximately 80 feet downstream from the center of Pine Road	*5,153
Sandy Creek: Approximately 80 feet downstream from the center of Midoil Road	*1,170
Short Canyon Creek (shallow flooding): At the center of the intersection of Leliter Road and Placer Street	#2
South Branch Poso Creek: Approximately 700 feet west along Kimberlina Road from its intersection with Zachary Avenue	*445
South El Paso Wash (shallow flooding): At the center of the intersection of Drummond Avenue (Boliva Avenue) and Jacks Ranch Road	*2,368
South fork Kern River: Approximately 80 feet downstream from the center of Doyle Ranch Road	*2,705
South Fork Kern River (shallow flooding): At the center of the intersection of Cozort Lane and Poplar Street	#2
South Ridgecrest Wash (shallow flooding): Approximately 150 feet downstream from the center of West Upjohn Avenue	*2,429
Twenty Mule Team Creek (shallow flooding): Approximately 125 feet upstream from the center of Boron Avenue	*2,446
Sycamore Creek: Approximately 50 feet downstream from the center of Bear Valley Road	*4,053
Shallow flooding near south of Bakersfield: At the intersection of Digiorgio Road and Fairfax Road	#1
Shallow flooding near Tehachapi: Approximately 220 feet south on Turl Street from its intersection with Highline Road	*4,135
Shallow flooding near McFarland: Approximately 200 feet north of intersection of Whisler Road and State Highway 99	*382
Shallow flooding near Tehachupi: Approximately 220 feet south of the center of the intersection of Turl Street and Highline Road	*4,135
Shallow flooding near Twenty Mule Team Creek: At the center of the intersection of Sierra Vista Street	#2

Maps available for inspection at Planning and development Services Department, Flood Plain Management Director, 1110 26th Street, Bakersfield, California 93301. Send comments to Honorable Pauline Larwood, 1415 Truxton Avenue, Bakersfield, California 93301.

Tulare County (unincorporated areas)

King River: 50 feet upstream from the center of Southern Pacific Railroad	*238
St. Johns River: 100 feet upstream from the center of Friant-Kern Canal	*422
Shallow flooding: At the center of the intersection of Road 170 and Avenue 304	#1
Lower Kaweah River: 50 feet upstream from the center of Southern Pacific Railroad	*388
Shallow flooding:	
At the center of the intersection of Road 182 and Avenue 304	#2
100 feet west from the center of the intersection of Avenue 312 and Atcheson, Topeka and Santa Fe Railroad	*405
Middle Fork Kaweah River: 10 feet upstream from the center of South Dinely Drive	*996
South Fork Kaweah River: 50 feet upstream from the center of South Fork Drive	*957
North Fork Kaweah River: 50 feet upstream from the center of North Fork Drive	*971
Elk Bayou: 50 feet upstream from the center of State Highway 99	*267
Lower Tule River: 50 feet upstream from the center of Plano Street	*459
Shallow flooding:	
100 feet west from the center of the intersection of Crestview Street and Putnam Avenue	#1
At the center of the intersection of Plano Street and Henderson Avenue	*448
Upper Tule River: 50 feet upstream from the center of Globe Road	*777

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upper Tule River Northern Branch: At confluence with Upper Tule River	*701
Graham Creek: 100 feet upstream from the center of Globe Drive	*890
Campbell Creek: 50 feet upstream from the center of County Highway J28	*744
Fountain Springs Creek: 50 feet upstream from the center of Avenue 88	*515
Sand Creek-Shallow Flooding:	
At the center of the intersection of Avenue 432 and Road 132	#1
100 feet northwest from the center of the intersection of Ione Road and El Monte Avenue	#2
At the center of the intersection of Avenue 408 and Road 120	*359
Alta East Branch-Shallow Flooding:	
At the center of the intersection of Road 136 and Avenue 422	#1
500 feet north from the center of the intersection of Avenue 424 and Road 128	#2
Antelope Creek-Shallow Flooding: At the center of the intersection of Road 212 and Avenue 356	*464
East Overflow Antelope Creek-Shallow Flooding: 100 feet north from the center of the intersection of Wutchumna Avenue and city of Woodlake corporate limits	*453
West Overflow Antelope Creek-Shallow Flooding: 150 feet southwest from the center of the intersection of Cajon Avenue and Olivera Drive	*456
Lewis Creek-Shallow Flooding: 100 feet northwest from the center of Lindmore Street crossing of Friant-Kern Canal	*416
Frazier Creek-Shallow Flooding:	
At the center of intersection of Olive Drive and F Avenue	*420
At the center of intersection of Ninth Avenue and Road 228	#1
White River-Shallow Flooding: At the center of intersection of Road 136 and White Rock Avenue	*290
Portir Slough-Shallow Flooding:	
100 feet west from the center of the intersection of Crestview Street and Putnam Avenue	#1
At the center of the intersection of Plano Street and Henderson Avenue	*448
Mill Creek-Shallow Flooding: At the intersection of Goshen Avenue and Boyer Lane	#2
Packwood Creek-Shallow Flooding: 100 feet southwest from the intersection of Mairinette Avenue and Oakdale Avenue	#1
Wootan Creek: 100 feet northeast from the intersection of Valley Road and Avenue 464	*439
Orange Cove Drain: 100 feet southeast from the intersection of Avenue 460 and Valley Road	*434

Maps available for inspection at County Department of Public Works, County Courthouse, Visalia, California. Send comments to the Honorable Leroy Swiney, Chairman, Board of Supervisors, County Courthouse, Visalia, California 93277.

CONNECTICUT

Farmington (town), Hartford County

Farmington River:	
At downstream corporate limits	*169
At Farmington Avenue	*171
At downstream side of CONRAIL	*176
Approximately 300 feet upstream of South Main Street/State Route 177	*198
Approximately 300 feet upstream of Main Street/State Route 4/179	*209
Approximately 1,900 feet upstream of Main Street/State Route 4/179	*213
At upstream corporate limits	*238
Pequabuck River:	
At confluence with Farmington River	*172
At upstream corporate limits	*172
Roaring Brook:	
At confluence with Farmington River	*196
Upstream side of Keyes Street	*208
At downstream side of Golf Cart Bridge	*229
At upstream corporate limits	*240

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Unionville Brook:	
At confluence with Farmington River	*200
Approximately 50 feet upstream of River Road	*211
At downstream side of Burlington Road	*234
Approximately 300 feet upstream of Burlington Road	*236
Scott Swamp Brook:	
At downstream corporate limits	*172
At upstream side of Hyde Road	*178
Approximately 60 feet upstream of Scott Swamp Road	*260
Approximately 40 feet downstream of Morea Road	*290
Poplar Swamp Brook:	
At confluence with Farmington River	*171
Approximately 650 feet upstream of dam	*171
Approximately 400 feet upstream of New Development Road	*185
Woodridge Lake Inlet:	
At downstream corporate limits	*171
Upstream side of Woodpond Road	*178
Approximately 940 feet upstream of Shady Lane	*226

Maps available at the Town Clerk's Office and Town Engineer's Office. Send comments to Honorable Thomas Wontorek, Town Manager of the Town of Farmington, Town Hall, 1 Monteik Drive, Farmington, Connecticut 06032.

DELAWARE

New Castle County, unincorporated areas

Christina River:	
Downstream county boundary	*10
Upstream side of Wilten Road	*20
Upstream side of State Route 72	*40
Upstream county boundary	*69
Red Clay Creek:	
At confluence with White Clay Creek	*19
Upstream side of Kirkwood Highway	*56
Upstream side of Lancaster Pike	*96
Upstream side of Hillsidemill Road	*126
Upstream side of Ashland Road	*152
Upstream side of Dam No. 10 at county boundary	*193
White Clay Creek:	
At confluence with Christina River	*13
At confluence of Pike Creek	*34
Upstream side of State Route 2	*54
Upstream side of Dam No. 5	*81
Approximately 3,000 feet downstream of State Boundary	*118
Tributary to White Clay Creek:	
At confluence with White Clay Creek	*13
Downstream side of AMTRAK crossing	*13
At State Route 4	*23
Mill Creek:	
At confluence with White Clay Creek	*19
Upstream side of Kirkwood Highway	*49
Upstream side of Limestone Road	*104
Upstream side of West End Camp Wright Road	*186
Upstream side of Brackenville Road	*227
Upstream side of Old Lancaster Pike	*259
Upstream county boundary	*310
Pike Creek:	
At confluence with White Clay Creek	*34
Upstream side of Henderson Road	*73
Upstream side of Granville Road	*158
At State Route 72	*180
Little Mill Creek:	
At confluence with Christina River	*10
Upstream side of Maryland Avenue	*20
Upstream side of Dupont Road	*63
Upstream side of Chessie System	*75
At State Route 141	*91
Chestnut Run:	
At confluence with Little Mill Creek	*77
Upstream side of State Route 2	*82
At Faulkland Road	*99
Brandywine Creek (downstream portion):	
At downstream corporate limits	*39
Approximately 530 feet upstream of fourth upstream dam	*91

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Brandywine Creek (upstream portion):	
Approximately 180 feet downstream of downstream State boundary	*155
Approximately 50 feet upstream of most upstream State boundary	*156
Delaware River: Entire length within county affected by tidal flooding	*10

Maps available for inspection in Drafting Room Number 206, County Engineering Building, 2701 Capitol Trail, Newark, Delaware. Send Comments to: Honorable Rita Justice, New Castle County Executive, City/County Building, 800 French Street, Wilmington, Delaware 19801.

INDIANA

Amboy (town), Miami County

Honey Creek:	
About 500 feet downstream of Main Street	*805
Just upstream of Conrail	*811

Maps available for inspection at the Amboy Clerk Treasurer's Office (Vickie Cameron), North Street, Amboy, Indiana. Send comments to Honorable Charles Lawson, Town Board President, Town of Amboy, Amboy Town Hall, P.O. Box 44, Amboy, Indiana 46911

Miami County (unincorporated areas)

Wabash River:	
At westernmost County Boundary	*626
About 0.95 mile upstream of U.S. Route 31	*634
Deer Creek:	
Just downstream of U.S. Route 31	*778
Just downstream of 150 West Road	*876
Dolin Young Ditch:	
Just upstream of 1200 South Road	*804
Just downstream of 1400 South Road	*821
Honey Creek:	
Just upstream of confluence of Overman Ditch	*797
Just downstream of 700 East Road	*812
Eel River:	
Just upstream of U.S. Route 31	*667
About 1.0 mile upstream of 400 North Road	*676
Mississinewa River	
Just downstream of State Route 124	*652
About 2.6 miles upstream of Frances Slocum Trail	*670

Maps available for inspection at the Miami County Plan Commission, County Courthouse, Room 103, Peru, Indiana. Send Comments to Honorable James Mock, President, County Board of Commissioners, Miami County, Miami County Courthouse, Peru, Indiana 46970.

North Manchester (city), Wabash County

Clear Creek:	
Just downstream of State Route 13 (downstream crossing)	*768
About 900 feet upstream of State Route 13 (upstream crossing)	*760
Eel River:	
About 2,300 feet downstream of abandoned railroad	*746
About 6,600 feet upstream of State Route 114	*775
Pony Creek:	
At confluence with Eel River	*750
About 1,200 feet upstream of State Route 113	*753

Maps available for inspection at the Office of the Clerk Treasurer, Town Hall, 103 East Main Street, North Manchester, Indiana. Send comments to Honorable Jack Williams, Town Board President, City of North Manchester, Town Hall, 103 East Main Street, North Manchester, Indian 46962.

Wabash County (unincorporated areas)

Eel River:	
About 550 feet downstream of confluence of Round Lake Tributary	*734
About 0.76 mile upstream of First Street	*767
Pony Creek:	
Just upstream of confluence with Eel River	*750
Just downstream of Hanley Road	*758
Grant Creek:	
Just upstream of confluence with Badger Creek	*782
Just downstream of Rudicel Road	*818
Clear Creek:	
Just upstream of confluence with Eel River	*742
Just downstream of Miller Road	*808
Wabash River:	
About 1.1 miles downstream of Prairie Road	*652
About 750 feet upstream of Norfolk Southern Railway	*692

Maps available for inspection at the Wabash County Plan Commission, County Courthouse, Wabash, Indiana. Send comments to Honorable Phillip Magner, President, County Board of Commissioners, Wabash County, Wabash County Courthouse, c/o County Auditor, Wabash, Indiana 462992.

IOWA

Atlantic (city), Cass County

East Nishnabotna River:	
About 2.6 miles downstream of 6th Street	*1,139
About 1,300 feet upstream of Buck Road	*1,155
Troublesome Creek:	
About 0.6 mile downstream of Olive Street	*1,155
About 1.1 miles upstream of Olive Street	*1,163

Maps available for inspection at the City Hall, 23 East 4th Street, Atlantic, Iowa. Send comments to Honorable Harry Gaines, Mayor, city of Atlantic, City Hall, 23 East 4th Street, Atlantic, Iowa 50022

KENTUCKY

Ghent (town), Carroll County

Ohio River:	
Along McCools Creek within community	*470
Along Ohio River bank within community	*471

Maps available for inspection at the Post Office, Ghent, Kentucky. Send comments to Honorable Johnny N. Davis, Mayor, town of Ghent, P.O. Box 344, Ghent, Kentucky 41045

Inez (city), Martin County

Middle fork:	
About 620 feet upstream of mouth	*634
About 1,300 feet upstream of mouth	*636

Maps available for inspection at the City Hall, Inez, Kentucky. Send comments to Honorable Joe Hammond, Mayor, city of Inez, City Hall, Inez, Kentucky 41224.

Milton (city), Trimble County

Ohio River:	
Just 0.7 mile downstream of U.S. Highway 421	*464
About 0.3 mile upstream of U.S. Highway 421	*465

Maps available for inspection at the City Hall, Milton, Kentucky. Send comments to Honorable C.L. Gosson, Mayor, city of Milton, City Hall, R # 3, Box 38, Milton, Kentucky 40045.

Prestonville (town), Carroll County

Ohio River: Within community	*468

Maps available for inspection at the Whiteside Fire Department, Prestonville, Kentucky. Send comments to Honorable Mervin Kindall, Mayor, Town of Prestonville, P.O. Box 384, Carrollton, Kentucky 41008.

Warfield (town), Martin County

Tug Fork:	
About 900 feet downstream of Norfolk Southern Railway	*623
Just upstream of confluence of Collins Creek	*624
Buck Creek: Within community	*624

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Collins Creek:	
At mouth	*624
About 475 feet upstream of confluence of Unnamed Tributary	*658

Maps available for inspection at the Town Hall, Warfield, Kentuck. Send comments to Honorable George Sammons, Mayor, Town of Warfield, Town Hall, Warfield, Kentucky 41267.

MASSACHUSETTS

Melrose (city), Middlesex County

Lower Spot Pond Brook:	
At downstream corporate limits	*37
Approximately 450 feet upstream of Kingsley Avenue extended	*40
Elf Pond: Entire Shoreline	*54

Maps available for inspection at the Engineering Vault, Melrose, Massachusetts. Send comments to Honorable James E. Milano, Mayor of the City of Melrose, Middlesex County, City Hall, 562 Main Street, Melrose, Massachusetts 02176.

MINNESOTA

Detroit Lakes (city), Becker County

Pelican River:	
Just upstream of confluence with Detroit Lake	*1,336
About 1,500 feet downstream of State Highway 34	*1,349
Detroit Lakes: Shoreline	*1,336

Maps available for inspection at City Hall, Detroit Lakes, Minnesota. Send comments to Honorable Loren Nelson, Mayor, City of Detroit Lakes, City Hall, P.O. Box 647, Detroit Lakes, Minnesota 56501.

Kennedy (city), Kittson County

County Ditch No. 4:	
About 650 feet downstream from Burlington Northern railroad	*823
About 0.6 miles upstream from 5th Street	*828

Maps available for inspection at City Hall, Kennedy, Minnesota. Honorable LeRoy Hoekstra, Mayor, City of Kennedy, City Hall, P.O. Box 7, Kennedy, Minnesota 56733.

Tintah (city), Traverse County

Judicial Ditch No. 12:	
About 3,500 feet downstream of 4th Street	*998
About 600 feet upstream of County Highway 19	*1,001

Maps available for inspection at the City Hall, Tintah, Minnesota. Send comments to Honorable Lucy McLemore, Mayor, City of Tintah, City Hall, P.O. Box 55, Tintah, Minnesota 56583.

MISSOURI

Gladstone (city), Clay County

East Creek:	
About 125 feet downstream of NW 58th Street	*866
Just downstream of Main Street	*887
Just upstream of Main Street	*892
About 400 feet upstream of Apartment Driveway	*900
Mill Creek:	
About 300 feet downstream of Antioch Road	*888
Just downstream of North Garfield	*901
Just upstream of North Garfield	*906
Just downstream of North Highland Street	*912
Just upstream of North Highland Street	*917
About 0.61 mile upstream of North Highland Street	*947
Rock Creek Tributary:	
About 0.19 mile downstream of North Myrtle	*849
Just downstream of North Indiana	*862
Just upstream of North Indiana	*867
Just downstream of Prospect Avenue North	*894
Just upstream of Prospect Avenue North	*899
About 1.21 miles upstream of Prospect Avenue North	*928
Shoal Coat:	
About 0.29 mile downstream of Antioch Road	*822
About 0.59 mile upstream of Antioch Road	*839

Maps available for inspection at the City Engineer's Office, City Hall, 7010 North Holmes, Gladstone, Missouri. Send comments to Honorable Patrick J. Reilly, City Manager, City of Gladstone, City Hall, 7010 North Holmes, Gladstone, Missouri 64118.

Kansas City (city), Clay, Platte and Jackson Counties

Todd Creek:	
About 0.26 mile downstream of Unnamed Road	*816
About 1.4 miles upstream of Northwest Prairie View Road	*929
Wildcat Branch:	
At confluence with Todd Creek	*853
About 1.5 miles upstream of Northwest 126th Street	*928
First Creek:	
About 0.78 mile downstream of Northwest 128th Street (at corporate limits)	*896
Just upstream of Northwest Baughman Road	*970
Second Creek:	
About 2.95 miles downstream of Cookingham Drive (at corporate limits)	*865
Just downstream of Cookingham Drive	*924
Just upstream of Cookingham Drive	*931
Just downstream of Northwest 100th Street	*979
Just upstream of Northwest 100th Street	*964
Second Creek West Branch:	
At confluence with Second Creek	*943
About 1.10 miles upstream of Northwest 108th Street	*970
Rocky Branch:	
Just downstream of Northeast 132nd Street	*887
About 1.39 miles upstream of Northeast 132nd Street	*916
Brush Creek (Platte County):	
About 1.79 miles downstream of Hampton Road (at corporate limits)	*824
About 1.73 miles upstream of North Childress Avenue	*930
Line Creek:	
About 300 feet downstream of Interstate 29	*769
About 1.76 miles upstream of Northwest 68th Street	*885
Waukomis Lake Tributary:	
At confluence with Line Creek	*828
About 0.84 mile upstream of Northwest Bryan Avenue	*879
East Fork Line Creek:	
At confluence with Line Creek	*793
About 0.81 mile upstream of Hidden Lakes Drive	*884
Old Maids Creek:	
At confluence with Line Creek	*778
Just downstream of Northwest Waukomis Drive	*784
Just upstream of Northwest Waukomis Drive	*794
About 0.95 mile upstream of Platte County-Clay County Boundary	*868
East Creek:	
About 850 feet downstream of U.S. Highway 69	*769
Just downstream of Interstate 29	*782
Just upstream of Interstate 29	*797
Just downstream of Englewood Bridge Road	*830
Just upstream of Englewood Bridge Road	*835
Just downstream of U.S. Highway 169	*856
Just upstream of U.S. Highway 169	*866
Just upstream of Northwest 58th Street	*867
Burlington Creek:	
About 1,270 feet downstream of Northwest 53rd Terrace	*797
Just upstream of North Helena Avenue	*837
Shoal Creek:	
Just downstream of Burlington Northern railroad	*735
Just downstream of North Oak Street	*937
Little Shoal Creek:	
Just downstream of Interstate 35	*798
About 1.42 miles upstream of Northeast 76th Street	*828
Mill Creek:	
About 465 feet downstream of confluence of Mill Creek Tributary	*781
Just downstream of Cypress Road	*838
Just upstream of Cypress Road	*844
Just upstream of Northeast 56th Street	*888
Rock Creek Tributary:	
At confluence with Mill Creek	*828
About 1.09 miles upstream of confluence with Mill Creek	*849
East Fork Shoal Creek:	
At confluence with Shoal Creek	*798
About 1,295 feet upstream of Northeast Stanley Road	*925
Fishing River:	
About 0.43 mile downstream of Home Street (at corporate limits)	*861
Just downstream of North Stark Avenue	*903
Missouri River:	
About 6.80 miles downstream of Harry S. Truman Bridge	*734
About 3.39 miles upstream of Broadway Highway Bridge (at corporate limits)	*757
Rock Creek (Avondale):	
About 160 feet downstream of Antioch Road	*778
Just downstream of Interstate 35	*811
Just upstream of Interstate 35	*816
Just downstream of North Parvin Road	*816
Just upstream of North Parvin Road	*821
About 850 feet upstream of North Parvin Road	*822
Buckeye Creek:	
At confluence with Missouri River	*743
About 0.26 mile upstream of Northeast 38th Street	*790
Searcy Branch:	
At confluence with Missouri River	*743
Just downstream of State Highway 210 Access Road	*743
Just upstream of State Highway 210 Access Road	*748
Just downstream of New Street	*750
Just upstream of New Street	*755
Just downstream of Russell Road	*775
Just upstream of Russell Road	*783
Just downstream of Parvin Road	*784
Just upstream of Parvin Road	*795
Unnamed Creek at Randolf East Branch:	
At confluence with Missouri River	*742
About 0.16 mile upstream of Birmingham Road	*744
Unnamed Creek at Randolf North Branch:	
Just downstream of Interstate 435 southbound	*761
About 920 feet upstream of Interstate 435 southbound	*771
Blue River:	
About 1.25 miles downstream of Interstate 435 (at corporate limits)	*740
About 0.77 mile upstream of Kenneth Road (at corporate limits)	*878
Round Grove Creek:	
At confluence with Blue River	*769
About 0.43 mile upstream of Raytown Road	*862
Unnamed Tributary No 1:	
At confluence with Round Grove Creek	*802
Just downstream of Oklahoma, Kansas and Texas Railroad	*828
Just upstream of Oklahoma, Kansas and Texas Railroad	*838
About 400 feet upstream of 43rd Street	*884
Unnamed Tributary No. 2:	
At confluence with Round Grove Creek	*848
Just downstream of Pittman Road	*878
Just upstream of Pittman Road	*883
Just downstream of Sterling Avenue	*936
Just upstream of Sterling Avenue	*944
About 520 feet upstream of Claremont Avenue	*978
Brush Creek (Jackson County):	
At confluence with Blue River	*771
Just downstream of Prospect Avenue	*774
Just upstream of Prospect avenue	*784
Just downstream of Woodland Avenue	*788
Just upstream of Woodland Avenue	*790
Just downstream of Paseo Boulevard	*796

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just upstream of Paseo Boulevard	*809
Just downstream of State Line road	*852
Town Fork Creek:	
Just downstream of Swope Parkway	*721
Just upstream of Swope Parkway	*789
Just downstream of 51st Street	*789
Just upstream of 51st Street	*794
Just downstream of 55th Street	*797
Just upstream of 55th Street	*803
Just downstream of 57th Street	*806
Just upstream of 57th Street	*812
Just downstream of 59th Street	*826
Just upstream of 59th Street	*830
Just downstream of Citadel Drive	*854
Indian Creek:	
At confluence with Blue River	*800
About 0.47 mile upstream of 103rd Street (at corporate limits)	*830
Dyke Branch:	
At confluence with Indian Creek	*800
Just downstream of southbound Ward Parkway	*849
Little Blue River:	
About 320 feet upstream of Lee's Summit Road	*784
Just downstream of Longview Lake Dam	*824
About 4.90 miles upstream of Longview Lake Dam (at corporate limits)	*908
Little Cedar Creek:	
At confluence with Little Blue River	*800
About 1.2 miles upstream of Rhinehart Road	*808
White Oak Creek:	
At confluence with Little Blue River	*808
About 0.5 mile upstream of Military Club Road	*808
Lumpkins Fork:	
At confluence with Little Blue River	*907
Just downstream of 155th Street	*948
Hickman Mills Creek:	
At confluence with Blue River	*795
About 2,950 feet upstream of Burlington Northern railroad	*905
Shallow Flooding (ponding behind Birmingham District Levee):	
At intersection of Northeast 49th Street and Northeast Birmingham Road	*726
About 600 feet northeast of intersection of Northeast Vrooman Drive and North Maywood Avenue	*732
Shallow Flooding (ponding behind Norfolk Southern Railway and Oklahoma Kansas and Texas Railroad): About 1,000 feet southwest of intersection of Northeast Elden Avenue and State Highway 201	#2
Shallow Flooding (ponding behind Northeast industrial district Levee):	
About 350 feet west of intersection of Harry S. Truman Bridge and a road atop the Northeast Industrial District Levee	*728
At intersection of Kenworth Avenue and Southern Road	*736
At intersection of Gardner Avenue and Monroe Avenue	*740
Shallow Flooding (ponding behind North Kansas City Levee): At intersection of Harlem Road and Walnut Street	*742
Shallow Flooding (ponding behind Central Industrial District Levee): At intersection of 9th Street and Wyoming Street	*747
Shallow Flooding (sheet flow near Central Business District):	
At intersection of 19th Street and Wyoming Street	#1
At inersection of Kansas City Terminal Railway and Burlington Northern south of 25th Street	#2
At intersection of 28th Street and Southwest Boulevard	#3

Maps available for inspection at City Hall, 414 East 12th Street, Kansas City, Missouri. Send comments to Honorable Richard L. Berkley, Mayor, City of Kansas City, City Hall, 414 East 12th Street, Kansas City, Missouri 64106.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Lafayette County (unincorporated areas)	
Missouri River:	
About 6.5 miles downstream of U.S. Highway 65	*670
About 14 miles upstream of State Highway 13	*711

Maps available for inspection at the Lafayette County Courthouse, Second Floor, Lexington, Missouri. Send comments to Honorable Dorothy Summers, Presiding County Commissioner, Lafayette County, County Courthouse, P.O. Box 357, Lexington, Missouri 64067.

NEW HAMPSHIRE

Lisbon (town), Grafton County

Ammonoosuc River:	
Downstream corporate limits	*550
Upstream side of dam	*578
Upstream side of U.S. Route 302	*601
Confluence of Gale River	*659
At Sherman Road	*662
Upstream corporate limits	*690

Maps available for inspection at the Board of Selectmen's Office, 21 School Street, Lisbon, New Hampshire. Send comments to Honorable Earl White, Chairman of the Board of Selectmen of the Town of Lisbon, Grafton County, 21 School Street, Lisbon, New Hampshire 03585.

Seabrook Beach Village District, Rockingham County

Atlantic Ocean:	
Approximately 100 feet east of Tilton Street at eastern corporate limits	*12
Intersection of Portsmouth Avenue and Woodstock Street	*9
Old Beach Road at western corporate limits	*9

Maps available for inspection at the Warren West Building, Route 1A, Seabrook, New Hampshire. Send comments to Honorable Edmund F. Xavier, Jr., Chairman of Beach Commissioners of Seabrook Beach Village District, Rockingham County, 328 Ocean Boulevard, Seabrook, New Hampshire 03874.

NEW YORK

Candor (town), Tioga County

Owego Creek:	
Approximately 425 feet downstream of corporate limits	*857
At confluence of West Branch Owego Creek	*881
West Branch Owego Creek:	
At confluence with Owego Creek	*881
Approximately 120 feet downstream of Blewer Road	*924
Upstream side of West Newark Cross Road	*984
Approximately 2.7 miles upstream of West Newark Cross Road	*1,030
Cattalonk Creek:	
Approximately 250 feet downstream of corporate limits	*844
Approximately 60 feet upstream of corporate limits	*846

Maps available for inspection at the Candor Town Hall, Candor, New York. Send comments to Honorable Cloyd Manzer, Supervisor of the Town of Candor, Tioga County, 90 Main Street, Candor, New York 13743.

Chester (village), Orange County

Black Meadow Creek:	
At downsteam corporate limits	*450
Upstream side of New York Route 17	*468
At upstream corporate limits	*475
Black Meadow Creek Tributary 3:	
At confluence with Black Meadow Creek	*475
At upstream corporate limits	*479
Black Meadow Creek Tributary 4:	
At confluence with Black Meadow Creek	*475

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At upstream corporate limits	*475

Maps available for inspection at the Village Hall, 47 Main Street, Chester, New York. Send comments to Honorable Ross P. Vero, Mayor of the Village of Chester, Orange County, 47 Main Street, Chester, New York 10918.

Concord (town), Erie County

Spring Brook:	
At upstream side of North Street	*1,345
Approximately 0.8 mile upstream of North Street	#1,355
At downstream side of Middle Road	*1,360

Maps available for inspection at the Clerk's Office, Town Hall, 86 Frankin Street, Springville, New York. Send comments to Honorable Kenneth Barie, Supervisor of the Town of Concord, Erie County, 86 Franklin Street, Springville, New York 14141.

Florida (village), Orange County

Quaker Creek:	
At downstream corporate limits	*389
Upstream side of Florida Green Drive	*444
Approximately 0.94 mile upstream of Bridge Street	*452
Brown Creek:	
At confluence with Quaker Creek	*400
Upstream side of Randall Street	*443
At upstream corporate limits	*447

Maps available for inspection at the Village Hall, Florida, New York. Send comments to Honorable John Harter, Mayor of the Village of Florida, Orange County, 33 South Main Street, Florida, New York 10921.

Horseheads (village), Chemung County

Newtown Creek:	
Downstream corporate limits	*874
Upstream side of Route 17	*880
Upstream side of West Mill Street	*886
Upstream corporate limits	*893
Prospect Creek:	
Upstream side of North Main Street	*897
Upstream side of CONRAIL	*901
Upstream side of Gardner Road	*926
Upstream side of Westinghouse Road	*937
Upstream corporate limits	*943
Beaver Brook:	
Upstream side of Access Road	*887
At most upstream corporate limits	*895
Catherine Creek:	
Portion of Old Chemung Canal within community	*892
Approximately 700 feet west of Old Chemung Canal at northern corporate limits	*894

Maps available for inspection at the Village Hall, 202 South Main Street, Horseheads, New York. Send comments to Honorable Daniel Ammerman, Manager of the Village of Horseheads, Chemung County, 202 South Main Street, Horseheads, New York 14845.

Horseheads (town), Chemung County

Newtown Creek:	
Downstream corporate limits	*863
Approximately 300 feet upstream State Route 17	*880
Upstream side of State Route 13	*936
Upstream side of Bowman Hill Road	*991
At First Street	*1,090
North Branch Newtown Creek:	
Confluence with Newtown Creek	*932
Upstream side of State Route 223	*952
Corporate limits	*1,002
Beaver Brook:	
Confluence with Newtown Creek	*875
Upstream side of Access Road Bridge	*887
Upstream side of State Route 13	*911
Upstream side of Bowman Hill Terrace	*946

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Bowman Hill Road	*954
Catherine Creek:	
Downstream corporate limits	*868
Upstream side of Middle Road	*933
Upstream corporate limits	*951
Tributary No. 5 to Catherine Creek:	
Confluence with Catherine Creek	*938
Ridge Road	*956
Corporate limits	*966
Prospect Creek:	
Downstream corporate limits	*943
Upstream side of Hickory Grove Road	*956
Upstream side of footbridge	*968
Upstream side of Quarry Road	*981
Upstream corporate limits	*981
McCann's Tributary:	
Approximately 530 feet downstream of footbridge to school	*861
Footbridge to school	*864
Approximately 200 feet upstream of Lenox Avenue	*875
Halderman Hollow Creek:	
Camden Avenue	*876
Oakwood Avenue	*887
State Route 328	*903
Lenox Avenue	*926
Shallow flooding: South of Abandoned Railroad	#2

Maps available for inspection at the Town Hall, 150 Wygant Road, Horseheads, New York. Send comments to Honorable Rudolph Baer, Supervisor of the Town of Horseheads, Chemung County, Town Hall, 150 Wygant Road, Horseheads, New York 14845.

Nichols (village), Tioga County

Susquehanna River:	
Downstream corporate limits (extended)	*793
Approximately 580 feet downstream of confluence of Wappasening Creek	*795
Wappasening Creek: Entire shoreline of Wappasening Creek within community	*795

Maps available for inspection at the Village Hall, Nichols, New York. Send comments to Honorable Glenn Cole, Mayor of the Village of Nichols, Tioga County, Main Street, Nichols, New York 13812.

Oneonta (town), Otsego County

Susquehanna River:	
Area northwest of State Route 7 at corporate limits extending 0.5 mile along road	*1,057
Downstream corporate limits	*1,058
Confluence of Otego Creek	*1,059
Area north of Interstate 88 and south of the Delaware and Hudson Railway from City of Oneonta corporate limits to State Route 23	#2
Approximately 200 feet upstream of State Route 23	*1,063
Approximately 1 mile upstream of State Route 23	*1,069
Downstream side of Main Street	*1,079
Downstream side of Grand Avenue	*1,081
Downstream side of dam	*1,084
Upstream side of dam	*1,088
Upstream side of Abandoned Railroad	*1,097
Confluence of Charlotte Creek	*1,101
Downstream side of County Route 47	*1,104
Upstream corporate limits	*1,110
Otego Creek:	
Confluence with the Susquehanna River	*1,059
Approximately 250 feet upstream of Pony Farm Road	*1,060
Downstream side of County Route 6	*1,066
Approximately 320 feet downstream of confluence of Beckers Canal	*1,069
Upstream side of State Route 23	*1,071
Approximately 50 feet upstream of confluence of Harrison Creek	*1,075
Upstream corporate limits	*1,081
Beckers Canal:	
Confluence with Otego Creek	*1,069
Downstream side of State Route 23-205	*1,084
Approximately 60 feet upstream of State Route 23-205	*1,094
Downstream side of Chestnut Street	*1,110
Approximately 50 feet downstream of Winnie Hill Road	*1,122
Area south of mall building and northeast of Chestnut Street bridge	#1
Charlotte Creek:	
Confluence with Susquehanna River	*1,101
Approximately 400 feet southwest of end of Hemlock Road	*1,122
Confluence of Prosser Hollow	*1,144
Upstream corporate limits	*1,159

Maps available for inspection at the Oneonta Town Hall, Oneonta, New York. Send comments to Honorable Leslie G. Foster, Supervisor of the Town of Oneonta, Otsego County, 17 Jackson Avenue, Oneonta, New York 13820.

Putnam (town), Washington County

Lake Champlain: Entire shoreline within community	*102

Maps available for inspection at the Putnam Town Hall, Putnam Station, New York. Send comments to Honorable Kevin D. Hart, Supervisor of the Town of Putnam, Washington County, Little Harris Road, Putnam Station, New York 12861.

Somers (town), Westchester County

Muscoot River:	
At confluence with Amawalk Reservoir	*397
Upstream side of CONRAIL	*459
Upstream side of Mahopac Avenue	*480
At upstream corporate limits	*513
Plum Brook:	
At confluence with New Croton Reservoir	*201
Upstream side of Brick Hill Road	*270
Upstream side of New York Route 202	*311
At confluence of Plum Brook Tributary 1	*403
At upstream corporate limits	*499
Plum Brook Tributary 1:	
At confluence with Plum Brook	*403
Approximately 310 feet upstream of Lake Shore Drive	*476
Brown Brook:	
At confluence with New Croton Reservoir	*194
Upstream side of New York Route 202	*246
Upstream side of Heritage Hills Drive	*279
Upstream side of Green Briar Lane	*353
Approximately 0.6 mile upstream of Warren Street	*427

Maps available for inspection at The Elephant Hotel, Routes 202 & 100, Somers, New York. Send comments to Honorable D. Wayne Van Tassell, Supervisor of the Town of Somers, Westchester County, Routes 202 & 100, The Elephant Hotel, Somers, New York 10589.

Springville (village), Erie County

Spring Brook:	
At upstream side of South Buffalo Street	*1,306
At downstream side of Main Street culvert	*1,317
At North Street	*1,344

Maps available for inspection at the Village Hall, Springville, New York. Send comments to Honorable J. James Neff, Mayor of the Village of Springville, Erie County, 5 West Main Street, Village Hall, Springville, New York 14141.

Thurman (town), Warren County

Hudson River:	
At State Route 418	*618
Approximately 4.0 miles upstream of State Route 418	*650
Approximately 7.8 miles upstream of State Route 418	*715

Maps available for inspection at the Thurman Town Hall, Athol, New York. Send comments to Honorable Edwin J. Baker, Supervisor of the Town of Thurman, Warren County, Mountain Road, Athol, New York 12810.

Ulysses (town), Tompkins County

Lake Cayuga: Entire shoreline within community	*386

Maps available for inspection at the Ulysses Town Hall, Trumansburg, New York. Send comments to Honorable Martin A. Luster, Supervisor of the Town of Ulysses, Tompkins County, Elm Street, Trumansburg, New York 14886.

OHIO

Lockland (village), Hamilton County

Mill Creek:	
About 350 feet downstream of Davis Avenue	*544
About 500 feet downstream of Smalley Avenue	*551
West Fork Mill Creek:	
About 1,800 feet downstream of Interstate 75	*539
Just downstream of Chessie System	*561

Maps available for inspection at the Municipal Building, Wyoming and Cooper Avenue, Lockland, Ohio. Send comments to Honorable James Brown, Mayor, Village of Lockland, Municipal Building, Wyoming and Cooper Avenue, Lockland, Ohio 45215.

Woodlawn (village), Hamilton County

West Fork Mill Creek:	
About 2600 feet downstream of Springfield Pike	*566
About 1.6 miles upstream of Riddle Road	*621
West Fork Mill Creek North Tributary:	
At mouth	*569
About 330 feet upstream of Linden Avenue	*588
West Fork Mill Creek South Tributary:	
Just upstream of confluence with West Fork Mill Creek	*586
About 0.38 mile above mouth	*623
About 0.40 mile mile above mouth	*636

Maps available for inspection at the Municipal Building, 10143 Woodlawn Boulevard, Cincinnati, Ohio. Send comments to Honorable Lawyer Lawson, Mayor, Village of woodlawn, Municipal Building, 10143 Woodlawn Boulevard, Cincinnati, Ohio 45215.

OREGON

Benton County (unincorporated area)

Willamette River: At the intersection of U.S. Highway 20 and Juniper Lane	*204
Marys River: Approximately 300 feet upstream from center of State Highway (Alsea Highway)	*276
North Fork Alsea River: Approximately 75 feet upstream from center of Alsea-Deadwood Highway (State Highway 201)	*286
Newton Creek: Approximately 50 feet upstream from center of Southern Pacific Railroad	*293
Oak Creek: Approximately 100 feet upstream from center of Southern Pacific Railroad	*234
Soap Creek: Immediately upstream of unnamed road, which is approximately 12,000 feet upstream from Old Portland and Umpqua Valley Road	*345
Frazier Creek: Approximately 50 feet upstream from center of Southern Pacific Railroad	*228
Jackson Creek: Approximately 50 feet upstream from center of Northwest Highland Drive	*269
Millrace: At divergence from Marys River	*224
Millrace Overflow: At Crystal Lake Drive	*221

Maps available for inspection at Public Works Department, 360 S.W. Avery, Corvallis, Oregon. Send comments to Honorable Dale Schrock, 180 N.W. 5th Street, Corvallis, Oregon 97330.

Salem (city), Marion County

Claggett Creek: 300 feet downstream of Southern Pacific Railroad	*136

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
East Fork Pringle Creek: 270 feet downstream of a private road which intersects on the north with Ewald Avenue S.E.	*199

Maps available for inspection at Public Works Department, 555 Liberty Street, Salem, Oregon. Send comments to Honorable Sue Harris, 555 Liberty Street, Salem, Oregon 97301.

PENNSYLVANIA

Pocono (township), Monroe County

Pocono Creek:	
At downstream corporate limits	*752
Approximately 50 feet upstream of second crossing of State Route 611	*792
Approximately 140 feet downstream of Stadden Road	*821
Approximately 105 feet upstream of Warner Drive	*848
Upstream side of Interstate Route 80 (eastbound)	*965
Upstream side of second crossing of Spur E. Camelback/LR 45024	*1,135
Approximately 0.5 mile upstream of second crossing Spur E. Camelback/LR 45024	*1,210
Swiftwater Creek:	
Approximately 60 feet downstream of first crossing of corporate limits	*929
At second crossing of corporate limits	*958
Approximately 60 feet upstream of third crossing of corporate limits	*1,055
At upstream side of State Route 611	*1,141
Approximately 70 feet upstream of State Route 314	*1,204
Scot Run:	
At confluence with Pocono Creek	*948
At upstream side of Scot Run Avenue	*981
At upstream side of dam	*1,105
Approximately 130 feet upstream of fourth crossing of State Route 611	*1,065
Bulgers Run:	
At confluence with Pocono Creek	*830
At upstream side of Cherry Lane Road	*842
At upstream side of White Oak Drive	*963
At upstream side of access road located upstream of White Oak Drive	*964
Cranberry Creek:	
At confluence with Pocono Creek	*795
Approximately 100 feet downstream of State Route 611	*822
At downstream side of Cranberry Road	*919
Tributary 4 to Pocono Creek:	
At confluence with Pocono Creek	*865
At upstream side of Fish Hill Road	*892
Approximately 62 feet upstream of access road located upstream of Fish Hill Road	*914

Maps available for inspection at the Township Building, Tannersville, Pennsylvania. Send comments to Honorable John Wolfe, Chairman of the Township of Pocono Board of Supervisors, Box 207, Tannersville, Pennsylvania 18372.

TEXAS

Albany (city), Shackleford County

North Fork Salt Prong Hubbard Creek:	
2,800 feet downstream from corporate limits	*1,380
At upstream side of South Main Street	*1,400
At upstream corporate limits	*1,418
Rhino Reynolds Creek:	
At confluence with North Fork Salt Prong Hubbard Creek	*1,391
At downstream side of Pecan Street	*1,415
1,200 feet upstream of North 10th Street	*1,445
Webb Memorial Creek:	
At confluence with North Fork Salt Prong Hubbard Creek	*1,404
At upstream side of Central Street	*1,417
At upstream corporate limits	*1,433

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)

Maps available for inspection at the City Hall, Albany, Texas. Send comments to Honorable Wayne Hogan, Mayor of the City of Albany, Shackleford County, P.O. Box 595, Albany, Texas 76430.

Bedford (city), Tarrant County

Bedford Creek:	
Approximately 600 feet downstream of Tibbetts Drive	*529
Upstream side of State Route 121	*552
Upstream side of Bedford Road	*567
Approximately 100 feet downstream of Harwood Road	*580
East Branch Bedford Creek:	
Downstream side of Airport Freeway	*546
Upstream side of Commerce Place	*564
Upstream side of Bedford Road	*573
Approximately 100 feet downstream of northbound State Route 121	*584
East Fork Bedford Creek:	
At confluence with Bedford Creek	*552
Upstream side of Bedford Forum Drive	*558
Upstream side of Bedford Road	*567
Approximately 200 feet upstream of Park Avenue	*576
West Branch Bedford Creek:	
Downstream corporate limits	*536
Upstream side of Hospital Parkway	*545
Approximately 100 feet upstream of Park Place Avenue	*564
Approximately 300 feet downstream of Central Drive	*571
North Fork West Branch Bedford Creek:	
At confluence with West Branch Bedford Creek	*551
Approximately 1,100 feet upstream of confluence with West Branch Bedford Creek	*568
Little Bear Creek:	
Upstream side of State Route 121 access road	*538
Upstream side of southbound Frontage Road	*541
Approximately 1,200 feet upstream of southbound Frontage Road	*542
Sulphur Branch:	
Downstream corporate limits	*506
Upstream side of Circle Lane	*525
Upstream side of Bedford Road	*550
Upstream side of Harwood Road	*584
Approximately 200 feet downstream of Simpson Terrance	*605
Steam SB-1:	
At confluence with Sulphur Branch	*518
Upstream side of Schumac Lane	*536
Upstream side of westbound State Route 121	*568
Approximately 70 feet upstream of Parkwood Drive	*604
Valley View Branch:	
Approximately 250 feet downstream of Cheryl Avenue	*547
Upstream side of Bedford Road	*563
Upstream side of westbound State Route 121	*574
Approximately 650 feet upstream of westbound State Route 121	*575
Approximately 300 feet downstream of Harwood Road	*591
Approximately 70 feet downstream of Harwood Road	*592

Maps available for inspection at the City Hall, 2000 Forest Ridge Drive, Bedford, Texas. Send comments to Honorable L. Don Dodson, Mayor of the City of Bedford, Tarrant County, P.O. Box 157, Bedford, Texas 76021.

Clarendon (city), Donley County

Clarendon Creek East:	
Approximately 560 feet upstream of Clarendon Lake	*2,714
Upstream corporate limits	*2,758
Clarendon Creek West:	
Approximately 280 feet upstream of Clarendon Lake	*2,714
At Third Street	*2,726
Tributary 1:	
At confluence with Clarendon Creek East	*2,739
Upstream corporate limits	*2,775
Tributary 1A:	
At confluence with Tributary 1A	*2,771
Approximately 400 feet east of corporate limits	*2,791
Tributary 2:	
Upstream of Fourth Street	*2,735
Downstream of McClelland Street	*2,753
Tributary 3:	
At confluence with Clarendon Creek East	*2,715
Approximately 250 feet upstream of upstream corporate limits	*2,740
Western Tributary:	
Approximately 275 feet downstream of downstream corporate limits	*2,752
Upstream corporate limits	*2,763

Sheet runoff—(Clarendon Creek East): South of 2nd and 3rd Streets #1 and north of 4th Street and between 150 feet west of Ellerbe Street and Gorst Street.

Maps available for inspection at the City Hall, Clarendon, Texas. Send comments to Honorable James L. Kuhn, Mayor of the City of Clarendon, Donley County, P.O. Box 1089, Clarendon, Texas 79226.

Goliad (city), Goliad County

Maddox Branch:	
Approximately 640 feet downstream of Fannin Street	*138
Approximately 40 feet downstream of Southern Pacific Railroad	*142
Approximately 1,800 feet upstream of East Oak Street	*169
At upstream corporate limits	*202
Sparrow Branch:	
At downstream corporate limits	*140
At upstream side of East Franklin Street	*154
Approximately 80 feet upstream of North Church Street	*185
At upstream corporate limits	*196
Southwest City Drain:	
At downstream corporate limits	*141
At upstream side of Pearl Street (U.S. Route 59)	*162
Approximately 200 feet upstream of West Oak Street	*194

Maps available for inspection at the City Hall, Goliad, Texas. Send comments to Honorable Shirley Young, Mayor of the City of Goliad, Goliad County, P.O. Box 939, Goliad, Texas 77963.

Hearne (city), Robertson County

Little Brazos River:	
Approximately 840 feet downstream of Southern Pacific Railroad bridge	*268
Approximately 1,120 feet upstream of Southern Pacific Railroad bridge	*270
Approximately .5 mile upstream of U.S. Highway 79	*274
Sandy Creek:	
At downstream corporate limits	*267
At downstream side of Southern Pacific Railroad bridge	*298
Approximately 480 feet above upstream corporate limits	*304
Lost Creek:	
At downstream corporate limits	*272
At downstream side of Cedar Street	*286
Approximately 240 feet upstream of San Gabrial Street	*295
At first upstream corporate limits crossing	*305
At upstream corporate limits	*320

Maps available for inspection at the City Hall, 210 Cedar Street, Hearne, Texas. Send comments to Honorable Baylor Carrington, Mayor of the City of Hearne, Robertson County, 210 Cedar Street, Hearne, Texas 77859

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Kirbyville (city), Jasper County	
Trout Creek:	
Downstream corporate limits	*99
Approximately 0.6 mile upstream of U.S. Route 96	*105
Pin Oak Creek:	
Approximately 0.4 mile downstream of Gulf Colorado and Santa Fe RR	*99
Approximately 0.6 mile upstream of most upstream corporate limits	*107
Maps available for inspection at the City Hall, Kirbyville, Texas. Send comments to Honorable Victor Hamilton, Mayor of the City of Kirbyville, Jasper County, P.O. Drawer K, Kirbyville, Texas 75956.	
Lake Dallas (city), Denton County	
Lewisville Lake: Entire shoreline within community	*537
Swisher Creek:	
Upstream side of North Shady Shores Road	*537
Upstream side of Wembly Road (extended)	*538
Downstream side of Oak Lane (extended)	*546
Downstream side of dam at corporate limits	*560
Maps available for inspection at the City Hall, 303 Alamo, Lake Dallas, Texas. Send comments to Honorable Johnny J. Vinson, Mayor of the City of Lake Dallas, Denton County, P.O. Box 368, Lake Dallas, Texas 75065.	
Weatherford (city), Parker County	
Town Creek:	
Approximately 225 feet downstream of the downstream corporate limits	*931
Approximately 490 feet downstream of the confluence with Holland Lake Creek	*952
Approximately 600 feet downstream of Missouri and Pacific Railroad	*960
Approximately 100 feet downstream of Interstate Highway 80/180	*968
Approximately 60 feet downstream of Main Street	*1,009
Approximately 300 feet downstream of Franklin Street	*1,016
Approximately 2,080 feet downstream of North Bowie Drive	*1,031
At Upstream corporate limits	*1,045
Willow Creek:	
At downstream corporate limits	*901
Approximately 0.8 mile upstream of Interstate Highway 20	*910
At upstream corporate limits	*921
Holland Lake Creek:	
At confluence with Town Creek	*954
Approximately 550 feed downstream of Holland Lake Drive	*969
Approximately 380 feet upstream of clear Lake Road	*1,015
South Holland Lake Creek:	
At confluence with Holland Lake Creek	*1,005
Approximately 460 feet upstream of Clear Lake Road	*1,011
Black Warrior Branch:	
At confluence with Town Creek	*990
Approximately 1,830 feet upstream of Eureka Street	*1,030
Approximately 1,150 feet upstream of Main Street	*1,061
Pogue Branch:	
At confluence with Town Creek	*1,039
Approximately 2,000 feet upstream of confluence with Town Creek	*1,052
Approximately 350 feet upstream of FM 920	*1,086
Clear Fork Trinity River: Approximately 600 feet downstream of corporate limits at Lake Weatherford Dam	*866
Lake Weatherford: Entire shoreline	*909

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the City Manager's Office, 119 Palo Pinto Street, Weatherford, Texas. Send comments to Honorable Tom Vick, Mayor of the City of Weatherford, Parker County, P.O. Box 225, Weatherford, Texas 76086.	
White Settlement (city), Tarrant County	
Farmers Branch:	
Approximately 960 feet downstream of Grant Lane	*634
At downstream side of Meadow Park Drive	*667
At upstream side of Las Vegas Trail	*692
At upstream corporate limits	*718
Stream FB-1:	
At confluence with Farmers Branch	*692
At upstream side of George Street	*710
Stream WF-11:	
At downstream corporate limits	*614
At upstream side of Silver Creek Road	*635
At upstream side of Clifford Avenue	*670
Approximately 80 feet downstream of upstream corporate limits	*711
Maps available for inspection at the City Hall, 214 Meadow Park Drive. Send comments to Honorable James Herring, Mayor of the City of White Settlement, Tarrant County, 214 Meadow Park Drive, White Settlement, Texas 76108.	
VERMONT	
Bristol (town), Addison County	
New Haven River:	
Downstream corporate limits	*323
Downstream side of State Route 116 (1st upstream crossing)	*332
Downstream side of State Route 116 (2nd upstream crossing)	*427
Upstream corporate limits of the Village of Bristol	*544
Downstream side of State Routes 17 and 116 (3rd upstream crossing)	*614
Upstream side of Falls	*691
Approximately 140 feet upstream of upstream corporate limits	*843
Maps available for inspection at the Municipal Building, Manager's Office, South Street, Bristol, Vermont. Send comments to Honorable Fred Baser, Chairman of the Board of Selectmen, Municipal Building, South Street, Bristol, Vermont 05443.	
Bristol (village), Addison County	
New Haven River:	
Approximately 60 feet downstream of downstream corporate limits	*442
Upstream side of River Road	*488
Approximately 350 feet upstream of upstream corporate limits	*547
Maps available for inspection at the Municipal Buildings, Manager's Office, South Street, Bristol, Vermont. Send comments to Honorable Peter Ryan, Chairman of the Board of Selectmen of the Village of Bristol, Municipal Building, South Street, Bristol, Vermont 05443.	
Lincoln (town), Addison County	
New Haven River:	
Approximately 70 feet downstream of the downstream corporate limits	*840
Approximately 40 feet upstream of York Hill Road	*893
At confluence of Beaver Meadow Brook	*950
Downstream side of Gove Hill Road	*969
Downstream side of Mountain Road (2nd upstream crossing)	*1,036
Approximately 0.4 mile upstream confluence of Cooty Brook	*1,091

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Town Office, Quaker Street, Bristol, Vermont. Send comments to Honorable William Robinson, Chairman of the Board of Selectmen of the Town of Lincoln, Addison County, R.F.D. #1, Bristol, Vermont 05443.	
Stockbridge (town), Windsor County	
White River:	
Downstream corporate limits	*582
Confluence with Lilleville Brook	*600
Upstream side of Gaysville Bridge	*640
Confluence of Little Stony Brook	*658
Downstream side of Blakmers Boulevard	*697
Upstream side of confluence of Tweed River	*735
Upstream corporate limits	*753
Tweed River:	
Confluence with White River	*735
Upstream side of State Route 107	*747
Upstream side of South Hill Road	*756
Upstream corporate limits	*798
Maps available for inspection at the Town Clerk's Vault, Town of Stockbridge, Vermont. Send comments to Honorable Thomas V. Jenkins, Chairman of the Board of Selectmen of the Town of Stockbridge, Windsor County, Gaysville, Vermont 05772.	
VIRGINIA	
Pennington Gap (town), Lee County	
North Fork Powell River:	
Downstream corporate limits	*1,353
Approximately 0.6 mile downstream of upstream corporate limits	*1,362
At upstream corporate limits	*1,371
Cane Creek:	
At confluence with North Fork Powell River	*1,354
Upstream side of Harrell Street	*1,361
Upstream side of Ford Street	*1,366
Approximately 0.6 mile upstream of upstream corporate limits	*1,378
Maps available for inspection at 130 East Willow Road, Pennington Gap, Virginia. Send comments to Honorable C. R. Smith, Mayor of the Town of Pennington Gap, 130 East Willow Road, Pennington Gap, Virginia 24277.	
St. Charles (town), Lee County	
Straight Creek:	
At downstream corporate limits	*1,521
Upstream side of State Route 352	*1,528
At upstream corporate limits	*1,538
Big Branch:	
At downstream corporate limits	*1,528
Approximately 320 feet upstream of State Route 352	*1,540
At upstream corporate limits	*1,573
Baileys Trace:	
At confluence of Straight Creek	*1,528
At upstream side of Southern Railway Bridge	*1,532
At upstream corporate limits	*1,538
Maps available for inspection at the Town Hall, St. Charles, Virginia. Send comments to Honorable James Mooneyhan, Mayor of the Town of St. Charles, P.O. Drawer N, St. Charles, Virginia 24282.	
WEST VIRGINIA	
Buckhannon (city), Upshur County	
Buckhannon River:	
At downstream corporate limits	*1,415
Upstream side of Florida Street	*1,416
At upstream corporate limits	*1,418
Maps available for inspection at the City Hall, Main and Florida Streets, Buckhannon, West Virginia. Send comments to Honorable James R. Carpenter, Mayor of the City of Buckhannon, City Hall, Main and Florida Streets, Buckhannon, West Virginia 26201.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Cameron (city), Marshall County	
Grave Creek:	
At downstream corporate limits	*1,024
At downstream side of Adeline Avenue	*1,045
At upstream corporate limits	*1,079
Maps available for inspection at 44 West Main Street, Cameron, West Virginia. Send comments to Honorable Gary Wright, Mayor of the City of Cameron, 44 West Main Street, Cameron, West Virginia 26033.	
Philippi (city), Barbour County	
Tygart Valley River:	
Approximately 0.5 mile downstream of Walnut Street	*1,304
Downstream side of Main Street	*1,306
Approximately 0.6 mile upstream of confluence of Anglins Run	*1,308
Shooks Run:	
At confluence with Tygart Valley River	*1,307
Approximately 0.31 mile upstream of U.S. Route 119	*1,350
Upstream side of Park Street	*1,420
Approximately 20 feet upstream of upstream corporate limits	*1,425
Anglins Run:	
At confluence with Tygart Valley River	*1,307
Upstream side of Hall Street	*1,310
Upstream side of Dayton Street	*1,320
Approximately 1,040 feet upstream of Dayton Street	*1,345
Approximately 40 feet upstream of upstream corporate limits	*1,373
Maps available for inspection at the City Hall, 108 North Main Street, Philippi, West Virginia. Send comments to Honorable Donald Baughman, Mayor of the City of Philippi, City Hall, 108 North Main Street, Philipi, West Virginia 26416.	
WISCONSIN	
Brookfield (C), Waukesha County	
Fox River:	
Just upstream of Springdale Road	*824
About 1,600 feet upstream of confluence of Sussex Creek	*828
Poplar Creek:	
At mouth	*824
Just downstream of South Barker Road	*830
Deer Creek:	
About 2,200 feet downstream of Brookfield Road	*828
Just downstream of Greenfield Avenue	*839
Underwood Creek:	
Just downstream of North Avenue	*751
Just downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*802
Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*808
About 0.6 mile upstream of confluence of Dousman Ditch	*825
North Branch Underwood Creek:	
At mouth	*754
About 0.5 mile upstream of Burleigh Road	*757
South Branch Underwood Creek:	
About 550 feet downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*720
Just downstream of Interstate 94	*722
Dousman Ditch	
At mouth	*823
Just downstream of North Calhoun Road	*836
Butler Ditch:	
Just upstream of Hampton Road	*752
Just downstream of Lisbon Road	*774
Butler Ditch South Branch:	
At mouth	*762
Just downstream of Capitol Drive	*767

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the City Engineer's Office, City Hall, 2000 North Calhoun Road, Brookfield, Wisconsin. Send Comments to Honorable William A. Mitchell, Jr., Mayor, City of Brookfield, City Hall, 200 North Calhoun Road, Brookfield, Wisconsin 53005.	
Dowing (village), Dunn County	
Tiffany Creek:	
About 1.0 mile downstream of Soo Line Railroad	*973
Just downstream of State Highway 170	*983
Beaver Creek:	
At mouth	*978
About 1.1 miles upstream of County Highway O	*993
Sandy Creek:	
At mouth	*977
About 1,700 feet upstream of Soo Line Railroad	*981
Maps available for inspection at the Village Hall, Downing, Wisconsin. Send comments to Honorable Helmer Hurtgen, Village President, Village of Downing, Village Hall, R.R. #1, Box 157, Downing, Wisconsin 54734.	
Glenwood City (city), St. Croix County	
Tiffany Creek:	
About 1,400 feet downstream of Town Road	*995
About 3,200 feet upstream of Syme Avenue	*1,064
Glenhaven Creek:	
At mouth	*997
About 1,100 feet upstream of Oak Street	*1,022
Maps available for inspection at the City Hall, 830 1st Avenue, Glenwood City, Wisconsin. Send comments to Honorable Clarence C. Luepke, Mayor, City of Glenwood City, City Hall, 830 1st Avenue, Glenwood City, Wisconsin 54013.	

Issued: November 18, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-28938 Filed 12-5-85; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 205

[Docket No. FEMA 205-52]

Temporary Housing Assistance

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: This rule establishes the revisions to the Federal Emergency Management Agency (FEMA) program regulations for the Temporary Housing Assistance Program under section 404 of the Disaster Relief Act of 1974. Temporary housing assistance is provided to applicants who qualify for it as a result of a major disaster or emergency declared by the President. The revised regulations further specify agency policies concerning eligibility criteria; avoidance of duplication of benefits and the extent of assistance to be provided; deletes the provision of household items as part of supplemental assistance; and eliminates detailed procedures that are more appropriate for inclusion in program guidance publications.

DATE: Comments due on or before February 4, 1986.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 'C' Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Sarah L. Wise, Individual Assistance Division, Office of Disaster Assistance Programs, State and Local Programs and Support, Federal Emergency Management Agency, 500 'C' Street SW., Washington, DC 20472, (202) 646-3657.

SUPPLEMENTARY INFORMATION: The current program regulations have been in effect since September 16, 1983. Since then the program staff has evaluated the effectiveness of the regulations in many operations. The major areas of change are as follows:

More emphasis is placed on the temporary housing applicants assuming responsibility for their own recovery as much as possible. This is reflected in several policy changes. The first is to provide one month of assistance to predisaster renters and requiring them to contact FEMA if any additional assistance is needed. Predisaster renters normally can find equivalent housing and seldom incur additional housing costs as compared to a home owner who would incur the cost of renting an apartment or house while his/her residence is being repaired or rebuilt. There is a provision for those predisaster renters to receive continued assistance when adequate rental accommodations are not readily available. A second policy relecting the program philosophy is the establishment of a minimum dollar limitation for minimal repairs below which no assistance will be provided. A $100 limitation has been set based primarily on deductibles used throughout the insurance industry. A notice will be published in the **Federal Register** if the amount of this limitation is changed. However, the Regional Director may grant a waiver to the cost limitation on a case by case basis when extenuating circumstances exist in a particular operation.

The following have been added to paragraph (f)(2), Conditions of Ineligibility: An applicant who has received an adequate insurance settlement or for whom there is no indication of delay in receiving the

benefits; an applicant who has adequate insurance but has made no effort to obtain the benefits; and an applicant who files a late application which is not approved for processing. These conditions were previously implied conditions and FEMA purposes to state them explicitly to clarify past misunderstandings.

The authority to upgrade commercial mobile home sites and to waive the cost limitation on minimal repairs has been given to the Regional Director in order to provide more timely decision making in delivering temporary housing assistance.

Paragraph (g)(2)(iii) has been rewritten to state that staying with family and friends is an allowable form of assistance but only when the applicant elects it. If continued assistance is requested, the applicant will have to provide receipts for the assistance already provided.

Procedural details have been eliminated from the regulations and will be published as program guidance. Those details eliminated include the formulas for the minimal repairs cost limitation; calculation of the allowable housing costs when selling a mobile home; determination of the adjusted sales price for a mobile home; and the criteria for the justification for FEMA to provide mobile home group sites.

Supplemental Assistance (paragraph (j)) has been rewritten to eliminate household items and to add the provision for cash payments for furniture needs. The household items have been eliminated because these are normally available from voluntary agencies and from family and friends. The provision for cash payments in lieu of delivering furniture items has been added because in most areas furniture is readily available and it is felt that the applicant should be given the opportunity to choose what he/she wants. It is also not cost effective in most cases for the Government to contract for furniture.

Paragraph (m) concerning termination of assistance has been rewritten to shorten time frames and simplify the process without jeopardizing the occupants' rights to due process. The provision for an informal conference has been deleted. Experience has shown that prior to a termination notice being given to an occupant several contacts with the occupant have been made which equate to informal conferences. Because of this practice it has been determined that a two tiered termination procedure (i.e., informal and formal hearings) is not warranted. The proposed procedures provide for a hearing if the occupant requests one or for a written response to the appeal if the occupant does not. The notice to vacate provision in the current regulations has been deleted since the occupant will be given an initial notice of termination and a written resolution of the appeal. Therefore an additional notice to vacate would be superfluous.

Paragraph (s) has been rewritten. States will be required to have an approved State plan prior to the incident and an operational annex prior to administering a program. Experience with State administered programs identified several problems with the regulations as originally written. The major one was that certain information that is needed to evaluate the State's capability was required in the operational annex and the regulations did not state when the annex was to be submitted by the State. In addition, the items to be included in both the plan and annex have been expanded in order to give better guidance to the States when preparing their plan and annexes.

An environmental assessment resulting in a finding of no significant impact has been prepared in accordance with 44 CFR 10.9(e), and pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508). Copies of this assessment may be inspected or obtained at the Office of Disaster Assistance Programs, Individual Assistance Division; or at the Office of Rules Docket Clerk, FEMA, 500 'C' Street SW., Washington, DC 20472.

This rule has been determined not to be a "major rule" within the meaning of Executive Order 12291, for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and,

(3) It will not have a significant adverse impact 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.

Further, the program applies to individuals and thus it is certified it will not have a significant economic impact on a substantial number of small entities.

Therefore, no regulatory analyses have been prepared.

Subsection 205.52(s) provides for collection of informtion. This request, OMB #3067–0124, has been approved and is effective until July 1986.

List of Subjects in 44 CFR Part 205

Disaster assistance grant programs and Community disaster loans.

PART 205—[AMENDED]

Accordingly, it is proposed to amend 44 CFR Part 205 as follows:

1. The authority citation for Subpart D is revised to read as follows:

Authority: 42 U.S.C. 5201 *et seq.*; Reorg. Plan No. 3 of 1978; E.O. 12148.

2. Section 205.52 is revised to read as follows:

§ 205.52 Temporary Housing Assistance.

(a) *Purpose.* This action prescribes the policy to be followed by the Federal Government or any other organization when implementing section 404, Disaster Relief Act of 1974, 42 U.S.C. 5174.

(b) *Program intent.* Assistance under this program is made available to applicants who require temporary housing as a result of a major disaster or emergency declared by the President. Eligibility for assistance is based on *need* created by disaster-related uninhabitability of a primary residence or other disaster-related displacement, combined with a lack of adequate insurance coverage. Applicants are encouraged to take the initiative in meeting their housing needs, and eligible applicants may be paid for authorized accommodations and/or repairs. Ineligibility relates only to the criteria for temporary housing assistance; denial of such assistance does not imply that repairs to a residence are not required. Although numerous instances of minor damage may cause some inconvenience to the applicant, the determining eligibility factor must be the habitability of the residence. FEMA has also determined that it is reasonable to expect applicants or their landlords to make some repairs of a minor nature.

(c) *Definitions.* (1) "Adequate alternate housing" means housing that:

(i) Accommodates the needs of the applicant(s)/occupant(s);

(ii) Is within reasonable commuting distance of work, school or other centers of household activity;

(iii) Is within the financial ability of the applicant(s)/occupant(s); and

(iv) Does not impose an undue burden upon the applicant(s)/occupant(s) in the realization of his/her reasonable permanent housing plan.

(2) "Effective date of assistance" means either the date the eligible applicant obtained his/her own FEMA approved temporary housing or the date FEMA provides assistance but, where

applicable, only after appropriate insurance benefits are exhausted.

(3) "Essential living area" means that area of the residence essential to normal living, i.e., kitchen, one bathroom, dining area, living room, entrances and exits, and essential sleeping areas. It does not include family rooms, guest rooms, garages, or other nonessential areas, unless hazards exist in these areas which impact the safety of the essential living area.

(4) "Fair market rent" means a reasonable amount to pay in the local area for the size and type of accommodations provided. (Formula is provided in paragraph (g)(2) of this section.)

(5) "Financial ability" is the determination of the applicant's(s)/occupant's(s) ability to pay housing costs. The determination is based upon 25 percent of gross post disaster income or the amount paid for housing before the disaster provided the household income has not changed subsequent to or as a result of the disaster. When computing financial ability, extreme or unusual financial circumstances may be considered by the Regional Director or his/her designee.

(6) "Household" means all residents of the predisaster residence who request temporary housing assistance, plus any additions during the temporary housing period, such as infants, spouses or part-time residents who were not present at the time of the disaster but who are expected to return during the temporary housing period.

(7) "Housing costs" means shelter rent and mortgage payments including principal, interest, real estate taxes, real property insurance, and utility costs, where appropriate.

(8) "Occupant" means an eligible applicant residing in temporary housing provided under this section.

(9) "Owner-occupied" means that the residence is occupied by: the legal owner; a person who does not hold formal title to the residence and pays no rent but is responsible for the payment of taxes, maintenance of the residence; or a person who has lifetime occupancy rights with formal title vested in another.

(10) "Primary residence" means the dwelling where the applicant normally lives during the major portion of the calendar year, or a dwelling which is required because of proximity to employment.

(d) *Duplication of benefits.* (1) Requirement to avoid duplication. Assistance under section 404 shall not be made available to an applicant if such assistance has been provided by any other source. If any State or local government or voluntary agency has provided temporary housing, the assistance under this section begins at the expiration of such assistance and may continue rent-free, not to exceed twelve months provided the criteria for continued assistance, sub-paragraph (k)(3) of this section, are met. If it is determined that temporary housing assistance will be provided under this section, notification shall be given to those agencies which have the potential to duplicate such assistance. In the instance of insured applicants, assistance shall not be provided unless:

(i) Payment of the applicable benefits has been significantly delayed;

(ii) Applicable benefits have been exhausted;

(iii) Applicable benefits are insufficient to cover the temporary housing need; or

(iv) Housing or the required services are not available on the private market.

(2) Recovery of funds. Prior to provision of assistance, the applicant must agree to repay to FEMA from insurance proceeds or recoveries from any other source an amount equivalent to the value of the temporary housing assistance provided. In event shall the amount repaid to FEMA exceed the amount recovered by the applicant. All claims shall be collected in accordance with Agency Regulations at 44 CFR Part 11, Subpart C and procedures for debt collection.

(e) *Applications.* (1) Application period. Applications for temporary housing assistance shall be accepted for a 60-day period following the date of the declaration of a major disaster or emergency, unless additonal time for submission of applications is authorized by the Regional Director in order to achieve uniformity of application periods in contiguous States. After the established period, applications shall be accepted; however, processing shall not be completed unless authorized by the Regional Director or his/her designee, on a case-by-case basis. (Approved by the Office of Management and Budget under OMB Control Number 3067–0009.)

(2) *Household composition.* Members of a household shall be included on a single application and be provided a single temporary housing residence unless it is administratively determined that the size of the household requires that more than one residence be provided.

(f) *General eligibility guidelines.* Temporary housing assistance may be made available to those applicants who, as a result of a major disaster or emergency declared by the President, are qualified for such assistance.

(1) Conditions of elibibility. Temporary housing assistance may be provided only when *both* of the following conditions are met:

(i) The applicant's primary residence has been made uninhabitable or the applicant has been displaced as the result of a major disaster or emergency because:

(A) The residence has been destroyed, essential utility service has been interrupted, or the essential living area has been damaged as a result of the disaster to such an extent as to constitute a serious health or safety hazard which did not exist prior to the disaster. The Regional Director shall prepare additional guidelines when necessary to respond to a particular disaster;

(B) The residence has been made inaccessible as a result of the incident to the extent that the applicant cannot reasonably be expected to gain entry due to the disruption or destruction of transportation routes, other impediments to access, or restrictions placed on movement after the incident by a responsible official;

(C) The owner of the applicant's residence requires the residence to meet his/her personal needs because the owner's predisaster residence was made uninhabitable as a result of the disaster;

(D) Financial hardship resulting from the disaster has led to eviction or dispossession; or

(E) Other circumstances resulting from the disaster, as determined by the Regional Director, prevent the applicant from occupying his/her predisaster primary residence.

(ii) Insured applicants have made every reasonable effort to secure insurance benefits, available proceeds are insufficient as defined in paragraph (d) of this section, and the insured has agreed to repay FEMA from whatever insurance proceeds are later received, pursuant to paragraph (d)(2) of this section.

(2) Conditions of ineligibility. Temporary housing assistance shall not be provided:

(i) To an applicant who is displaced from other than his/her primary residence; or

(ii) To an applicant who is displaced solely as a consequence of a redevelopment program undertaken by a community; or

(iii) When the residence in question is habitable, i.e., only minor damage exists and it can reaonably be expected to be repaired by the applicant/owner or the landlord; or

(iv) When the applicant owns a secondary or vacation residence, or

unoccupied rental property which meets his/her temporary housing needs; or

(v) To an applicant who has adequate rent free housing accommodations; or

(vi) To an applicant who has adequate insurance coverage and there is no indication that benefits will be delayed; or

(vii) To an applicant who has adequate insurance but has made no effort to obtain the benefits; or

(viii) When a late application is not approved for processing by the Regional Director or his/her designee as authorized in paragraph (e)(1) above.

(g) Forms of temporary housing assistance. (1) Minimal repairs. Minimal repairs may be authorized to quickly repair or restore to a habitable condition that portion of the essential living area of, or private access to, an owner-occupied primary residence which was damaged a a result of the disaster. Such assistance shall not be used for major reconstruction or rehabilitation. Installation of utilities or conveniences not available in the residence prior to the disaster shall not be provided under minimal repairs. However, repairs which are authorized shall conform to applicable local and/or State building codes; upgrading of existing damaged utilities may be authorized when required by these codes.

(i) Options for minimal repairs. Eligible applicants approved for minimal repairs may be assisted through one or a combination of the following methods:

(A) Cash payment. Payment shall be limited to the reasonable costs for the repairs and replacements in the locality, as determined by the Regional Director or his/her designee.

(B) Provision of materals and replacement items.

(C) Government awarded repair contracts when authorized by the Associate Director.

(ii) *Feasibility.* Minimal repairs may be provided to those eligible applicants:

(A) Who are owner-occupants of the residence to be made habitable;

(B) Whose residence can be made habitable by repairs to the essential living area within 30 days following the feasibility determination. The Regional Director may extent this period for extenuating circumstances by determining that this type of assistance is still more cost effective, timely and otherwise suitable than other forms for temporary housing; and

(C) Whose residence can be made habitable within the amount required to assist a typical household in an existing resource for twelve months. The Regional Director may waive this cost limitation when this type of assistance is cost effective in comparison to other options for temporary housing assistance. However, minimal repairs may not be provided if the ocst of repairs is equal to or less than the minimum dollar limitation established by the Associate Director. The Regional Director or his/her designee may waive this limitation on a case by case basis for extenuating circumstances.

(iii) *Scope of work.* the type of repair or replacement authorized may vary depending upon the nature of the disaster. Items will be repaired where feasible or replaced only when necessary to insure the safety, security, or health of the occupant. Replacement items shall be of minimum quality, size, and capacity taking into consideration the needs of the applicant(s). Minimal repairs shall be disaster related and shall be limited to:

(A) Repairs to the plumbing system, including repairs to or replacement of fixtures, providing service to the kitchen and one bathroom:

(B) Repairs to the electrical system providing service to essential living areas, including repairs to or replacement of essential fixtures;

(C) Repairs to the heating unit, including repairs to duct work, vents, and integral fuel and electrical systems. If repair or replacement through other forms of assistance cannot be accomplished before the start of the season requiring heat, minimal repairs may be authorized. Replacement of a heating unit may be authorized by the Regional Director when an inspection shows that the unit has been damaged beyond repair, or when the availability of necessary parts or components makes repair impossible.

(D) Repairs to or replacement of essential components of the fuel system to provide for cooking, and to provide for heating when assistance through other program cannot be accomplished before the start of the season requiring heat;

(E) Pumping and cleaning of the septic system, repairs to or replacement of the tank, drainfield, or repairs to sewer lines;

(F) Flushing and/or purifying the water well, and repairs to or replacement of the pump, controls, tank, and pipes;

(G) Repairs to or replacement of exterior doors, repair of windows when the repair requires more than glazing, and/or screens needed for health purposes;

(H) Repairs to the stove and refrigerator, when feasible in lieu of provision of these items under paragrah (j) of this section;

(I) Minimal weather-proofing repairs to the roof, only when multiple or severe roof leaks affect the essential living area;

(J) Minimal repairs to interior floors, when severe buckling or deterioration creates a serious safety hazard;

(K) Blocking, leveling, and anchoring of a mobile home;

(L) Reconnecting and/or resetting mobile home sewer, water, electrical and fuel lines, and tanks;

(M) Towing necessary to remove a mobile home from its original site, only when necessary to accomplish other authorized minimal repairs;

(N) Emergency access repairs to private access routes, limited to those repairs that meet the minimum, safe, usable standards and using the most economical materials available. Such repairs are provided on a one-time basis when no alternative access facilities are immediately available;

(O) Elimination of other health and safety hazards or performance of essential repairs which are authorized by the Regional Director as not available through emergency services provided by volunteer or community agencies, and cannot reasonably be expected to be completed on a timely basis by the applicant without FEMA assistance.

(iv) Requirements of the Flood Disaster Protection Act. FEMA has determined that flood insurance purchase requirements need not be imposed as a condition of receiving minimal repairs. Minimal repairs recipients will normally receive assistance for further repairs from other programs which will impose the purchase and maintenance requirements. However, except for items which are not insurable under the National Flood Insurance Program (e.g., access, sewer and septic systems) minimal repairs may not be provided in zones A or V of a suspended or sanctioned community.

(2) *Existing resources.* These may include locally available Government-owned or assisted properties, private or commercial properties, transient accommodation, and staying with family and friends.

(i) Government owned or assisted properties. Payment for the use of such properties shall be in accordance with existing memoranda of understanding between FEMA and the providing agency.

(ii) Private and Commercial properties. Rental for private or commercial properties may be paid in accordance with the fair market rent guidelines for the type and size of residence required. At each disaster site, fair market rent guidelines for each size

residences shall be established by averaging the cost of available residence per number of bedrooms for each locality where temporary housing will be provided. Where privately owned mobile homes are to be used, a separate guideline should be developed because of the substantial difference in rent between this type of residence and conventional housing. Guidelines for hotels, motels, and other short-term resources shall be developed only when there is a substantial variance in price among the available supply. The purpose of these fair market rent guidelines is to prevent development of an inflated rental market resulting from the disaster and to insure cost effectiveness. These guidelines reflect the desired maximum payment. Use of resources more costly than the guidelines may be authorized for full payment only when other existing resources are not available. When authorized by the Reginal Director or his/her designee, the Federal Government may pay for security deposits; however, the owner or occupant shall reimburse the full amount to the Federal Government before or at time that temporary housing assistance is terminated.

(iii) *Staying with Family and Friends.* Sharing of accommodations with family or friends is an allowable form of assistance only when an eligible applicant elects it as his/her form of assistance.

(iv) *Transient accommodations.* Immediately following a Presidentially declared major disaster or emergency, disaster victims are expected to stay with family or friends without FEMA assistance, or to make use of mass shelters to the fullest extent possible for short-term housing. Transient accommodations may be provided when individual circumstances warrant such assistance for only a short period of time or pending provision of other temporary housing resources. Transient accommodations may be provided for up to 30 days unless this period is extended by the Regional Director or his/her designee. Authorized expenditures for transient accommodations shall be restricted to the rental cost including utilities except for those which are separately metered. Payment for food, telephone, or other similar services is not authorized under this section.

(3) Mobile homes, travel trailers, and other manufactured housing units. Government-owned or privately owned mobile homes, travel trailers, and other manufactured housing units may be placed on commercial, private, or group sites. The placement must comply with applicable State and local codes and ordinances as well as FEMA's floodplain management regulations at 44 CFR Part 9, Floodplain Management and Protection of Wetlands, and the environmental assessment regulations at 44 CFR Part 10, Environmental Considerations.

(i) A commercial site is a site customarily leased for a fee because it is fully equipped to accommodate a housing unit. The Associate Director has determined that leasing commercial sites at Federal expense is in the public interest. When the Regional Director determines that upgrading of commercial sites or installation of utilities on such sites will provide more cost-effective, timely, and suitable temporary housing than other types of resources, he/she may authorize such action at Federal expense.

(ii) A private site is a site provided or obtained by the applicant at no cost to the Federal Government. The Associate Director has determined that the cost of installation or repairs of essential utilities on private sites is authorized at Federal expense when such actions will provide more cost-effective, timely, and suitable temporary housing than other types of resources.

(iii) A group site is a site which accommodates two or more units and is provided or obtained by a State or local government or other organization, completely developed with all essential utilities at not cost to the Federal Government. However, the Associate Director may authorize development of group sites, including installation of essential utilities, at Federal expense based upon a recommendation from the Regional Director indicating that all other efforts to obtain funding have been exhausted.

(h) *Appropriate form of temporary housing.* The form of temporary housing provided should not exceed eligible applicants' minimum requirements, taking into consideration items such as timely availability, cost effectiveness, permanent housing plans, special needs (handicaps, etc.) of the applicants, and the requirements of FEMA's floodplain management regulations at 44 CFR Part 9. An applicant shall receive one form of temporary housing, except for transient accommodations or when provision of an additional form is in the best interest of the Government. An eligible applicant is expected to accept the first offer of temporary housing; unwarranted refusal shall result in forfeiture of temporary housing assistance. Existing resources shall be utilized to the fullest extent practicable prior to provision of government-owned mobile homes.

(i) *Utility costs.* All utility costs shall be the responsibility of the occupant except where utility services are not metered separately and are therefore a part of the rental charge. Utility use charges and deposits shall always be the occupants responsibility.

(j) *Supplemental assistance.* Essential furniture may be provided to eligible temporary housing applicants when such assistance is required to occupy the primary or temporary housing residence. However, loss of furniture does not in and of itself constitute eligibility for temporary housing assistance.

(1) Assistance shall be provided in the most practical manner either by cash payment or obtaining the furniture items by purchase, lease, lease with an option to buy or from Federal stock. Items provided shall be of average construction and quality. Luxury items shall not be provided.

(2) Furniture made available to temporary housing applicants shall be disposed of in one of the following ways:

(i) In those instances where furniture has been leased with a purchase option, the occupant may purchase the items from the lessor before his/her temporary housing assistance is terminated; or

(ii) If the furniture has been purchased by the Federal Government it shall be disposed of in accordance with Federal property management procedures at 41 CFR 101–45.5, Abandonment or Destruction of Surplus Property.

(k) *Duration of Assistance*—(1) *Commencement.* Temporary housing assistance may be provided as of the date of the incident of the major disaster or emergency as specified in the **Federal Register** notice. An effective date of assistance shall be established for each applicant.

(2) *Continued assistance.* Predisaster renters normally shall be provided no more that 1 month of assistance unless the Regional Director determines that continued assistance is warranted in accordance with subparagraph (k)(3) of this section. All other occupants of temporary housing shall be certified eligible for continued assistance in increments not to exceed 3 months. Recertification of eligibility for continued assistance shall be in accordance with subpargraph (k)(3) of this section, taking into consideration the occupant's permanent housing plan. A realistic permanent housing plan shall be established for each occupant not later than at the time of the first recertification.

(3) *Criteria for continued assistance.* A temporary housing occupant shall make every effort to obtain and occupy permanent housing at the earliest possible time. A temporary housing occupant will be required to provide receipts and shall be eligible for continued assistance when:

(i) Adequate alternate housing is not available;

(ii) The permanent housing plan has not been realized through no fault of the applicant; or

(iii) The occupant(s) is in compliance with the terms of the lease/rental agreement including:

(A) Prompt payment of utility, rent, and other appropriate charges;

(B) Maintenance of the temporary housing residence and behavior of occupants in a manner normally expected of a tenant of rental housing;

(C) Utilization of the residence as a dwelling for the occupant's household;

(D) Reimbursement to the Government where all or a protion of the temporary housing assistance represents a duplication of benefits; and

(E) Fulfillment of responsibility to obtain alternate housing at the earliest possible time.

(l) *Rental policy.* Provided the occupant is eligible for continued assistance, no rental shall be established for the first twelve months of occupancy in temporary housing including occupancy in transient accommodations. Thereafter, provided temporary housing assistance is still required, rentals shall be established based on the fair market rent for the accommodations provided. Such rentals shall be adjusted to take into consideration the financial ability of the household. Based on information obtained through recertification, occupants will be notified of the date and the amount of the first rental payment at least 30 days before the expiration of the first 12 months of occupancy.

(m) *Termination of assistance.* Termination of temporary housing assistance shall be initiated with a 15-day written notice after which the occupant shall be liable for such additional charges as are deemed appropriate by the Regional Director or his/her designee including, but not limited to, the fair market rental for the temporary housing residence. Termination may be in the form of eviction from housing (if FEMA-leased housing) or termination of financial assistance (if payment is made to occupant).

(1) *Grounds for Termination.* Temporary housing assistance may be terminated for reasons including, but not limited to the following:

(i) Adequate alternate housing is available to the occupant(s);

(ii) The temporary housing assistance was obtained either through misrepresentation or fraud; or

(iii) Failure to comply with any term of the lease/rental agreement including those defined in sub-paragraph (k)(3)(iii) of this section

(2) *Termination procedures.* These procedures shall be utilized in all instances except when a State is administering the Temporary Housing Assistance Program. States shall be subject to their own procedures provided they afford the occupant(s) with due process safeguards described in paragraph (m)(2)(v)(b) of this section

(i) *Notification of Occupant.* Written notice shall be given by FEMA (or the entity designated to administer the program) to the occupant(s) at least 15 days prior to the proposed termination of assistance. This notice shall specify: the reasons for termination of assistance/occupancy; the date of terminatin, which shall be not less than 15 days after receipt of the notice; the administrative procedure available to the occupant if he/she wishes to dispute the action; and the occupant's liability after the termination date for additional charges.

(ii) *Filing of Appeal.* If the occupant desires to dispute the termination upon receipt of the writter notice specified in subparagraph (m)(2)(i) of this section he/she shall present an appeal in writing to the appropriate office in person or by mail within five business days. The appeal must be signed by the occupant and state the reasons why the assistance or occupancy should not be terminated. If a hearing is desired, the appeal should so state.

(iii) *Response to Appeal.* If a hearing pursuant to sub-paragraph (m)(2)(ii) of this section has not been requested the occupant has waived the right to a hearing. The appropirate program official shall deliver or mail a written response to the occupant within 5 business days after the receipt of the complaint.

(iv) *Request for hearing.* If the occupant requests a hearing pursuant to sub-paragraph (m)(2)(ii) or this section, FEMA shall schedule a hearing date within 10 business days from the receipt of the appeal, at a time and place reasonably convenient to the occupant, who shall be notified promptly thereof in writing. The notice of hearing shall specify the procedure governing the hearing.

(v) *Hearing.*—(A) *Hearing Officer.* The hearing shall be conducted by a Hearing Officer, who shall be designated by the Regional Director, and who shall not have been involved with the decision to terminate the occupant's temprary housing assistance, nor be a subordinate of any individual who was so involved.

(B) *Due Process.* The occupant shall be afforded a fair hearing and provided the basic safeguards of due process, including cross-examination of the responsible official(s), access to the documents on which FEMA is relying, the right to counsel, the right to present evidence and the right to a written decision.

(C) *Failure to appear.* It a occupant fails to appear at a hearing the Hearing Officer may make a determination that the occupant has waived his/her right to a hearing, or may, for good cause shown, postpone the hearing for no more than five business days.

(D) *Proof.* At the hearing, the occupant must first attempt to establish that continued assistance is appropriate; thereafter, FEMA must sustain the burden of proof in justifying that termination of assistance is appropriate. The occupant shall have the right to present evidence and arguments in support of his/her complaint, to controvert evidence relied on by FEMA, and to crossexamine all witnesses on whose testimony or information FEMA relies. The hearing shall be conducted by the Hearing Officer and any evidence perinent to the facts and issues raised may be received without regard to its admissibility under rules or evidence employed in formal judicial proceedings.

(vi) *Decision.* The decision of the Hearing Officer shall be based solely upon applicable Federal and State law, and FEMA regulations and requirements promulgated thereunder. The Hearing Officer shall prepare a written decision setting forth a statement of findings and conclusions together with the reasons therefor, concerning all material issues raised by the complainant within five (5) business days after the hearing. The decision of the Hearing Officer shall be binding on FEMA, which shall take all actions necessary to carry out the decision or refrain from any actions prohibited by the decision, unless the FEMA General Counsel determines and notifies the occupant in writing within 30 days of the hearing decision that the decision of the Hearing Officer is not legally supportable.

(A) If the decision is to evict, the decision shall include a notice to the occupant that he/she must vacate the premises within three (3) days of receipt of the written notice or on the termination date stated in the original

notice of termination, as required in (m)(2)(i) of this section, whichever is later. If the occupant does not quit the premises, appropriate action shall be taken and, if suit is brought, the occupant may be required to pay court costs and attorney fees.

(B) if the determination is to terminate financial assistance, such assistance shall be terminated in accordance with the original notice given pursuant to paragraph (m)(2)(i) of this section. If the occupant is required to give a specific number of days notice which exceeds the number of days in the termination notice, the Regional Director, or his/her designee, may approve the payment of rent for this period of time if requested by the occupant.

(n) *Disposition of temporary housing units.*—(1) *Acquisition.* The Associate Director may purchase mobile homes or other manufactured housing units for those who require temporary housing. After such temporary housing is vacated, it may be returned to one of the FEMA-operated Strategic Storage Centers for refurbishment and storage until needed in a subsequent major disaster or emergency.

(2) *Sales.*—(i) *Eligibility.* When adequate alternate housing is not available, the Regional Director shall make available for sale directly to a temporary housing occupant(s) any mobile home or manufactured housing unit, acquired by purchase, in accordance with the following:

(A) The unit is to be used as a primary residence;

(B) The purchaser has a site that complies with local codes and ordinances as well as FEMA's floodplain management regulations at 44 CFR Part 9 (in particular § 9.13(e)); and

(C) The purchaser has sufficient funds to purchase and, if necessary, relocate the unit.

The Associate Director may approve the sale of a mobile home or manufactured housing unit to a temporary housing occupant when adequate alternate housing is available but only when such sales are clearly in the best interest of the Government.

(ii) *Sales price.* Units shall be sold at prices that are fair and equitable to the purchaser and to the Government, as determined by the Associate Director. The purchaser shall pay the total sales price at the time of sale.

(iii) *Adjustment to the sales price.*—(A) *Policy.* Adjustments to the sales price may be provided only when both of the following conditions are met:

(*1*) There is a need to purchase the unit for use as the purchaser's primary residence because other adequate alternate housing is unavailable. Adequate alternate housing must meet the criteria in (c)(1) of this section, and may consist of:

(*i*) Existing housing;

(*ii*) Additional resources such as disaster-damage rental accommodations which can reasonably be expected to be repaired and become available in the near future;

(*iii*) New housing construction or housing to be made available through Government subsidy which is included in the immediate recovery plans for the area; and

(*iv*) Residences which can be repaired by the predisaster owner/occupant through funds available for insurance, other disaster assistance programs, or through his/her own resources.

(*2*) In addition to his/her own resources, the purchaser cannot obtain sufficient funds through insurance proceeds, disaster loans, grants, and commercial lending institutions to cover the sales price.

(B) Determining an adjusted sales price, the current available financial resources of the applicant shall be calculated. If the financial resources are equal to or greater than the basic sales price, then no adjustment shall be approved. If the applicant's financial resources are less than the basic sales price, the sales price shall be adjusted to take into consideration the financial resource available but shall include some consideration. Deviations from this rule may be reviewed on a case-by-case basis by the Associate Director or his/her designee.

(C) The Regional Director or Disaster Recovery Manager must approve all adjustments to the sales prices of a mobile home.

(iv) Other conditions of sale. (A) unit shall be sold "as is, where is" except for repairs necessary to protect health or safety, which are to be completed prior to sale. There shall be no implied warranties. In addition, the purchaser must be informed that he/she may have to bring the unit up to codes and standards which are applicable at the proposed site.

(B) In accordance with the Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended, the sale of a unit for the purpose of meeting the permanent housing need of an individual or family may not be approved where the unit would be placed in a designated special flood hazard area which has been identified by the Director for at least one year as floodprone unless the community in which the unit is to be located after the sale is, at the time of approval, participating in the National Flood Insurance Program. The purchaser must agree to buy and maintain an adequate flood insurance policy for as long as the unit is occupied by the purchaser. An adequate policy for purposes of this paragraph shall mean one which provides coverage for the basic sales price of the unit. The purchaser must provide proof of purchase of the initial flood insurance policy.

(3) *Transfer.* The Associate Director may lend temporary housing units purchased under section 404(a) of the Act directly to States, other Government entities, or voluntary organizations. Such transfers may be made only in connection with a Presidential declaration of a major disaster or emergency. Donations may be made only when it is in the best interest of the Government, such as when future re-use by the Federal Government would not be economically feasible. As a conditon of such transfers, the Associate Director shall require that the recipient:

(i) Utilize the units provided for the purpose of providing temporary housing for victims of major disasters or emergencies in accordance with the written agreement; and

(ii) Comply with the current applicable FEMA policies and regulations, including this section; 44 CFR Part 9 (especially §§ 9.13 and 9.14), Floodplain Management and Protection of Wetlands; 44 CFR Part 10, Environmental Assessment; and 44 CFR 205.16, Non-discrimination in Disaster Assistance. The Associate Director may order returned any temporary housing unit made available under this section which is not used in accordance with the terms of transfer.

(o) *Mortgage and rental payments.* Assistance in the form of mortgage or rental payments may be paid to or be provided on behalf of applicants who, as a result of a major disaster or emergency, have received written notice of dispossession or eviction from their primary residence by foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease entered into prior to the disaster. Written notice, for the purpose of this paragraph, means a communication in writing by a landlord, mortgage holder, or other party authorized under State law to file such notice. The purpose of such notice is to notify an occupant of impending termination of a lease, foreclosure of a mortgage or lien, or cancellation of any contract of sale, which would result in the occupant's dispossession or eviction. Applications for this type of assistance may be filed up to one year following the date of declaration. This assistance may be

provided for a period not to exceed one year or for the duration of the period of financial hardship, as determined by the Regional Director or his designee, whichever is less. The location of the residence of an applicant for assistance under this section shall not be a condition of eligibility.

(p) *Reconsiderations.* (1) An applicant declared ineligible for temporary housing assistance, an applicant whose application has been cancelled for cause, or an applicant whose application has been refused because of late filing, shall have the right to dispute such a determination within five (5) calendar days following notification of such action. The Regional Director or his/her designee shall reconsider the original decision within 15 calendar days after its receipt. The applicant shall be given a written notice of the disposition of the reconsideration. The decision of the Regional Director or his/her designee is final.

(2) An occupant who has been notified that his/her request to purchase a mobile home or manufactured housing unit or that his/her request for an adjustment to the sales price has been denied shall have the right to dispute such a determination within five (5) business days after receipt of such notice. The Regional Director shall reconsider the original decision within 15 calendar days after receipt of the complaint. The occupant shall receive written notice of the disposition of the reconsideration. The decision of the Regional Director is final.

(q) *Reports.* The Associate Director, Regional Director, or Federal Coordinating Officer may require from field operations such reports, plans, and evaluations as they deem necessary to carry out their responsibilities under the Act and these regulations.

(r) Federal responsibility. The Federal financial and operational responsibility; for the Temporary Housing Assistance Program shall not exceed 18 months from the date of the declaration of the major disaster or emergency. This period may be extended in writing by the Associate Director, based on a determination that it is necessary and in the public interest. The Regional Director may authorize continued use on a non-reimbursable basis of Government property, office space, and equipment by a State, other Government entity, or voluntary organization after the 18 month period.

(s) *Non-Federal administration of temporary housing assistance.* A State may request authority to administer all or part of the Temporary Housing Assistance Program in the Governor's request for a declaration or in a subsequent written request to the Regional Director from the Governor or his/her authorized representative. The State must have an approved plan prior to the incident and an approved operational annex within three (3) days of the declaration in order to administer the program. When administering the program the State must comply with FEMA program regulations and policies.

(1) State temporary housing assistance plan.

(i) States which have an interest in administering the Temporary Housing Assistance Program shall be required to develop a plan that includes, at a minimum, the items listed below:

(A) Assignment of temporary housing assistance responsibilities to State and/or local officials and agencies;

(B) A description of the program; its functions; goals and objectives of the program; and proposed organization and staffing plan;

(C) Procedures for:

(1) Accepting applications at Disaster Assistance Centers and subsequently at a State established disaster housing office;

(2) Determining eligibility utilizing FEMA's habitability contract and notifying applicants of the determination;

(3) Preventing duplication of benefits between temporary housing assistance and assistance from other means, as well as a recoupment procedure when duplication occurs;

(4) Providing the various types of assistance (minimal repairs, existing resources, transient accommodations, and mobile homes);

(5) Providing supplemental assistance;

(6) Recertifying occupants for continued assistance;

(7) Terminating assistance;

(8) Contracting for services and/or supplies;

(9) Quality control;

(10) Maintaining a management information system;

(11) Financial management;

(12) Public information;

(13) Processing appeals; and

(14) Arranging for a program review.

(ii) The Governor or his/her designee may request the Regional Director to provide technical assistance in the preparation of an administrative plan.

(iii) The Governor or his/her designee shall submit the plan to the Regional Director for approval. Plans shall be revised, as necessary, and shall be reviewed at least annually by the Regional Director or his/her designee.

(2) *Operational annex.* Prior to the State administering the program, the State must submit an operational annex which tailors the approved State plan to the particular disaster or emergency. The annex must be reviewed and approved by the Regional Director within three (3) days of the declaration or the State shall not be permitted to administer the program. The operational annex shall include but not be limited to:

(i) Organization and staffing specific to the major disaster or emergency;

(ii) Pertinent goals and management objectives;

(iii) A proposed budget; and

(iv) A narrative which describes methods for orderly tracking and processing of applications; assuring timely delivery of assistance; identification of potential problem areas; and any deviation from the approved plan.

The Regional Director or his/her designee may require additional annexes as necessary for subsequent phases of the operation.

(3) *Evaluation of capability.* State and local government assumption of the temporary housing assistance program for a particular disaster shall be approved by the Regional Director based on an evaluation of the capabilities and commitment of the entity. At a minimum, the evaluation shall include a review of the following:

(i) The State temporary housing assistance plan which has been approved by the Regional Director prior to the incident, and the specific operational annex which has been approved in accordance with sub-paragraph(s)(2);

(ii) Past performance in administration of temporary housing assistance or other similar operations;

(iii) Management and staff capabilities; and

(iv) Demonstrated understanding of the tasks to be performed.

(4) *Grant application.* Approval of funding shall be obtained through submission of a project application by the State or local government through the Governor's Authorized Representative. (Approved by the Office of Management and Budget under OMB Control Number 3067–0043.) The State shall maintain adequate documentation to enable analysis of the program in accordance with FEMA Regulations 44 CFR 205.115. Final reimbursement to the State, or final debt collection, shall be based on an examination of the voucher filed by the State.

(5) *Authorized costs.* All expenditures associated with administering the program are authorized if in compliance with this section and OMB Circular A–87 Revised, Cost Principles for State and Local Governments (46 FR 9548).

Specifically, the following expenses are authorized when applicable:

(i) Administrative expenses.

(A) Regular salaries;

(B) Overtime;

(C) Travel;

(D) Communications;

(E) Space rental;

(F) Equipment rental;

(G) Furniture rental;

(H) Supplies;

(I) Printing and reproduction;

(J) Liability insurance premiums; and

(K) Program reviews and audits.

(ii) Program costs.

(A) Minimal repairs;

(B) Costs associated with leases and rent reimbursements for temporary housing including transient accommodations and commercial site rental;

(C) Mobile home installation and maintenance;

(D) Mobile home private site development;

(E) Cost of supplemental assistance;

(F) Mortgage and rental payments; and

(G) Other necessary costs, when approved by the Associate Director.

All contracts require the review and approval of the Regional Director or his/her designee prior to award, in order to be considered as an authorized expenditure.

(6) *Federal monitoring and oversight.* The Regional Director or his/her designee shall monitor State-administered activities since he/she remains responsible for the overall delivery of temporary housing assistance. In addition, policy guidance and interpretations to meet specific needs of a disaster shall be provided through the oversight function.

(7) *Technical assistance.* The Regional Director or his/her designee shall provide technical assistance as necessary to support State-administered operations through training, procedural issuances, and by providing experienced personnel to assist the State and local staff.

(8) *Operational resources.* The Regional Director shall make available for use in State or locally administered operations Federal stand-by contracts, memoranda of understanding with Government and voluntary agencies, and Federal property, such as government-owned mobile homes and travel trailers.

(9) *Program Reviews and Audits.* The State shall conduct a program review of each operation. All operations are subject to Federal audit.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

November 26, 1985.

[FR Doc. 85-28937 Filed 12-5-85; 8:45 am]

BILLING CODE 6718-02-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Lespedeza leptostachya (Prairie Bush-Clover) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Lespedeza leptostachya* Engelmann (Prairie bush-clover) to be a threatened species. *L. leptostachya* has been extirpated from much of its historic range in northern and south-central Iowa, northern Illinois, southern Minnesota, and western Wisconsin. Construction and agricultural activities, livestock trampling, and unfavorable vegetational changes are threatening the species. However, the plant is extant at about 24 sites. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *L. leptostachya*. Critical habitat is not being proposed at this time.

The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by February 4, 1986. Public hearing requests must be received by January 21, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Coordinator, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator (see **ADDRESSES** above) (612-725-3276 or FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

Lespedeza leptostachya is an herbaceous perennial member of the pea family (Fabaceae) endemic to the Midwest. It is one of about 40 species of *Lespedeza* worldwide. Clewell (1966a) recognized 12 species of *Lespedeza* in North America. *L. leptostachya*, with woody rhizomes, grows to about 40 inches (1 meter) in height, has narrow linear compound leaves with silvery-white hairs, and slender terminal flowing spikes with 15-30 flowers each. The corolla is white to light purple. Clewell (1966c) presented a detailed description of the species, noting that *L. leptostachya* flowers from late July through mid-September and inhabits dry to mesic native prairies in northern Illinois, northern and south-central Iowa, southern Minnesota, and western Wisconsin. Such prairies are usually well-drained, and often gravelly, and occur on slopes of kames or eskers (hills of glacially deposited material) and river terraces. *L. leptostachya* is a colonizer of open habitats. Clewell (1966c) observed that *Lespedeza* species are shaded or crowded in habitats invaded by perennial grasses and woody species. *Lespedeza* species, however, are adapted to frequent fires and increase in response to fire.

Lespedeza leptostachya has always been rare and local throughout its four-state range. Formerly known from eight Illinois counties, there were approximately 370 plants at four sites in four counties (DuPage, Lee, Ogle, and Winnebago) in 1980. Only 66 individual plants could be located at the four sites in 1981, but it is not known whether a real population decline has taken place (Bowles and Kurz, 1981). Each site totals less than one acre. *L. leptostachya* is listed officially as threatened by the Illinois Department of Conservation.

In Iowa the historically known range of *L. leptostachya* included 23 counties in the northern and south-central sections of the State. There are currently nine extant populations in six counties (Clarke, Dickinson, Emmet, Howard, Lucas, and Winnishiek (Watson 1983)), and the species is listed officially as endangered by the Iowa Conservation Commission.

In Minnesota *L. leptostachya* is extant at eight sites in four southern counties (Cottonwood, Jackson, Goodhue, and Renville (Smith 1981)). Over 4,500 plants have been estimated on less than 50 acres. One site contains more than 2,000 plants and is the largest known extant population. The species is listed officially as threatened by the Minnesota Department of Natural Resources.

In Wisconsin there are three extant populations of *L. leptostachya* in three counties (Dane, Sauk, and Pierce

(Alverson 1981)). Three historic populations are known to have been extirpated. The species is listed officially as threatened by the Wisconsin Department of Natural Resources.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3)) and of its intention to review the status of the plant taxa named within. *L. leptostachya* was named in the Smithsonian Report as threatened and was included in the Service's 1975 notice of review.

Lespedeza leptostachya was also included as a category-1 species in an updated notice of review for plants published in the December 15, 1980, Federal Register (45 FR 82480). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The deadline for a finding on those species, including *L. leptostachya*, was October 13, 1983. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *L. leptostachya* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notice of the 1983 finding was published on January 20, 1984 (49 FR 2485), and of the 1984 finding on May 10, 1985 (50 FR 19761). Such a finding requires a reevaluation of the petition with 12 months, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; this proposed rule constitutes the new finding that the petitioned action is warranted, and proposes to implement the action in accordance with Section 4(b)(3)(B)(ii) of the Act.

Status reports compiled by Alverson (1981), Bowles and Kurz (1981), Smith (1981), and Watson (1983), as well as other pertinent literature (see "Literature Cited," below), provide the biological basis for this proposed rule. The data demonstrates low numbers of plants and continuing threats to the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *L. leptostachya* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Although *L. leptostachya* has always had a limited range, the current range is only a fraction of the former range. Agricultural activity has eliminated most of the species' suitable prairie habitat. Moreover, many of the 25 extant sites are threatened by several factors. One population in Illinois could be destroyed by quarrying activities although presently it is protected by the owner (Bowles and Kurz 1981). The State's largest population, of 100 plants, is on a State highway roadside currently being studied for widening. In Minnesota several sites are threatened by quarrying, residential development, and agricultural activities (Smith 1981). In Wisconsin, one of the three extant sites is threatened by residential development and vehicle use (Alverson 1981).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* With any rare plant species there is the possibility wildflower collectors may reduce populations in more accessible sites. Although this species is not known to have been affected by collecting, a potential threat exists.

C. *Disease or predation.* No diseases are known to be adversely impacting *L. leptostachya*. Heavy livestock grazing may be deterimental to the species (Smith 1981). One site in Iowa is subject to intensive grazing (Watson 1983).

D. *The inadequacy of existing regulatory mechanisms Lespedeza leptostachya* is listed officially as endangered or threatened by the States of Illinois, Iowa, Minnesota, and Wisconsin. Illinois law protects endangered and threatened plants found on State property; Iowa regulations pprohibit removal, possession, and sale of any plant species on the Federal and State lists; Minnesota statutes prohibit taking, transporting, and sale of State endangered and threatened plants from all lands, except ditches, roadways, and certain types of agricultural and forest lands; Wisconsin regulations prohibit any person from removing or transporting any endangered or threatened wild plant away from its native habitat on public property, or from property he or she does not own or control, except in the cource of forestry or agricultural practices or in the construction and maintenance of a utility facility. Although *Lespedeza leptostachya* is offered various forms of protection under these State laws, monitoring and enforcement are difficult due to limited personnel. The Endangered Species Act offers possibilities for protection of this taxon through section 6 by cooperation between the States and the Service and through section 7 (interagency cooperation) requirements. Most of the Iowa populations of *L. leptostahya* are contained within State Preserves. One site in Illinois is owned by the Illinois Department of Transportation. One site in Minnesota is on land owned by the Minnesota Historical Society; another site is owned by a private college. The largest population of *L. leptosotachya*, of about 2,000 plants, is located within the boundaries of the Kilen Wood State Park. Two sites in Wisconsin are on land owned by either The Nature Conservancy or Wisconsin Department of Natural Resources. The Natural Conservancy also has cooperated with several private landowners to protect the species. The Endangered Species Act would afford additional protection to *L. leptostachya*.

E. *Other natural or manmade factors affecting its continued existence.* None known.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this taxon, in determining to propose this rule. Based on this evaluation, the preferred action is to list *L. leptostachya* as a threatened species, because of the known losses of local populations of this rare species. For reasons detailed below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such

designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service believes that designation of critical habitat would not be prudent because no benefit to the taxon can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat description.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Endangered Species Act provides for land acquisition, if necessary, and cooperation with the States; it also requires that recovery actions be carried out for all listed species. These actions are initiated by the Service following listing. The protection required by Federal agencies and applicable prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habiat. If an activity may affect a listed species or its critical habiltat, the responsible Federal agency must enter into formal consultation with the Service. There are no known Federal activities planned in the range of *L. leptostachya*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *L. leptostachya*, all trade prohibitions of section 9(a)(2) of the Act, as implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. International and interstate commerce in *L. leptostachya* is not known to exist. It is anticipated that few trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species in areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. *L. leptostachya*, however, is not known to occur on Federal lands.

If this species is listed under the Act, the Service will review it to determine whether it should be considered for placement upon one of the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which is implemented through Section 8A of the Act, and whether it should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule, are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *L. leptostachya*;

(2) The location of any additional populations of *L. leptostachya* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *L. leptostachya*.

Final promulgation of the regulation on *L. leptostachya* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in the **Federal Register** (48 FR 49244) on October 25, 1983.

Literature Cited

Alverson, W.L. 1981. Status report of *Lespedeza leptostachya*. Wisconsin Dept. of Natural Resources. Unpubl. ms. 12 pp.

Bowles, M.L., and D.R. Kurz. 1981. Status report on *Lespedeza leptostachya*. Illinois Dept. of Conservation. Unpubl. ms. 7 pp.

Clewell, A.F. 1966a. Native North American species of *Lespedeza*. Rhodora 68:359–405.

———. 1966b. Natural history, cytology, and isolating mechanisms of the North American *Lespedezas*. Tall Timbers Res. Stat. Bull. 6. 39 pp.

———. 1966c. Identification of the *Lespedeza* in North America. Tall Timbers Res. Stat. Bull. 7. 29 pp.

Smith, W.R. 1981. Status report on *Lespedeza leptostachya* Engelm. Minnesota Natural Heritage Program. Unpubl. ms. 8 pp.

Watson, W.C. 1983. Status report of *Lespedeza leptostachya* Engelm. in Iowa. Iowa Conservation Commission. Unpubl. ms. 24 pp.

Authors

The authors of this proposed rule are John G. Sidle and William F. Harrison (see **ADDRESSES** section) (612–725–3276 or FTS 725–3276).

List of Subjects in 50 CFR Part 17

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

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 90 Stat. 911; Pub. L. 95–632, 92. Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 et seq.).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family:						
*	*	*	*	*		
Lespedeza leptostachya	Prairie brush-clover	U.S.A. (IA, IL, MN, WI)	T		NA	NA
*	*	*	*	*		

Dated: November 13, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–28950 Filed 12–5–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for Clematis socialis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a plant, *Clematis socialis*, (Alabama leather flower), to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended (Act). *Clematis socialis* is only known from two sites in St. Clair and Cherokee Counties, Alabama. Threats to this species include herbicide application and mechanical disturbances associated with clearing and maintaining highway rights-of-way and potential land use changes. This proposed rule, if made final, will extend the Act's protection to *Clematis socialis*. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by February 4, 1986. Public hearing requests must be received by January 21, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Field Station, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan (see **ADDRESSES** section) at 601/960–4900 or FTS 490–4900.

SUPPLEMENTARY INFORMATION:

Background

Clematis socialis, a member of the family Ranunculaceae, was first collected in 1980 in St. Clair County, Alabama and was described in 1982 by Dr. Robert Kral. The most distinctive features are its rhizomatous habit and formation of dense clones with erect stems reaching 0.2–0.3 meters (7–12 inches) in height. Leaves are variable from the base to the apex of the stem. The lowermost leaves are scalelike, median leaves are simple, and upper leaves are 3- to 5- foliolage. The flowers, which bloom from April to May, are solitary, urn- to bell-shaped, and blue-violet in color. The fruits are aggregates of achenes. *Clematis socialis* superficially resembles the more widespread *Clematis crispa*, but can be distinguished by its erect stems, rhizomatous nature, solitary flowers, and lack of tendrils (Kral, 1982 and 1983).

Clematis socialis is only known from two sites in northeast Alabama in St. Clair and Cherokee Counties. Attempts to locate additional populations have been unsuccessful. At both sites the plants are rooted in sticky, silty clay amid grass-sedge vegetation along State maintained highway rights-of-way. In St. Clair County the plants also occur in privately owned, contiguous pine-hardwood bottoms. The St. Clair County site has been repeatedly disturbed, and many of the plants have been destroyed through heavy vehicular traffic associated with timbering on the private land and clearing of the right-of-way. The continued existence of this species is also threatened by encroaching residential development and herbicide application.

On September 27, 1985 (50 FR 39525), the Service published a new plant notice of review, which included *Clematis socialis* as a category-1 species. Category-1 species are those for which data in the Service's possession indicate listing is warranted.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Clematis socialis* (Alabama leather flower) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* This species occurs on a roadside right-of-way and in the adjacent woodland in St. Clair County, Alabama; there are less than 50 clones and these are all restricted to 0.4 hectare (1 acre). Recently, diseased pines were removed from the site and, even though the opening of the canopy may have been beneficial, it is not known many plants were lost by mechanical disturbances when the timber was removed. The second population consists of only a few clones on a highway right-of-way in Cherokee County, Alabama. Due to its proximity to highways, *Clematis socialis* has suffered repeated disturbances in association with right-of-way

maintenance, inluding herbicide application, mowing, and scraping. The viability of this species has been additionally affected by erosion from adjacent roadside banks in St. Clair County. This erosion has caused many of the plants in the right-of-way to be covered by a thick layer of silt, in additon to changing the texture and drainage properties of the soil.

Clematis socialis is imminently threatened by encroaching residential development in St. Clair County. The private property on which this species occurs has been divided into individual lots and contiguous areas are rapidly being developed. Other land uses that are evident in the surrounding area forest management and pasturing for cattle.

The landowners have been informed of the *Clematis socialis* localities and the importance of protecting this rare species. Both the Alabama Highway Department and the private landowner have expressed an interest in cooperating with the Service in protecting *Clematis socialis*. Federal listing would enhance and reinforce any protective measures taken. Proper protection and management plans are needed for this species.

B. *Overutilization for commercial, recreational, scientific, or educational puroses.* Due to the limited distribution and small population size of *Clematis socialis*, indiscriminate collecting of any nature could seriously affect this species and perhaps result in its extinction. Kral (1982, 1983) indicates that this species has excellent horticultural potential. Publicity regarding its rarity could generate such a demand.

C. *Disease or predation.* This species is not known to be threatened by disease or predation.

D. *The inadequacy of existing regulatory mechnaisms.* There are no State or Federal laws protecting *Clematis socialis* or its habitat. The Endangered Species Act would provide protection for this species through Section 9 and the recovery process.

E. *Other nautral or manmade factors affecting its continued existence. Clematis socialis* is extremely vulnerable because of its resteicted range and low numbers. Any natural or human-induced disturbance could seriously affect its viability and even cause extinction. Furthermore, due to the elimited number of individuals, there is a small pool of genetic variability, which reduces the ability of this species to adapt to stress.

The Service has carefully acessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Clematis socialis* as endangered. Endangered status is proposed due to the species' restricted range and the multiplicity of threats facing it and its habitat. Critica habitat is not being proposed for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Clematis socialis* at this time. Publishing a detailed description and map of this species' habitat might stimulate public interest and make this species more vulnerable to taking by collectors (See factor "B" in the "Summary of Factors Affecting the Species"). Also, taking of listed plants is not prohibited by the Endangered Species Act, except from land under Federal jurisdiction. No benefit would be derived from designating critical habitat since the landowners are aware of the location and importance of protecting this species. Therefore, it would not be prudent or beneficial to determine critical habitat for *Clematis socialis* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following the listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruciton or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the reasonable Federal agency must enter into formal consultation with the Service. No Federal involvement is anticipated for *Clematis socialis* at this time.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that appy to all endangered plant species. With respect to *Clematis socialis*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. *Clematis socialis* is not known to occur on Federal lands, and therefore no requests for pemits are anticipated. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned

governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particulary are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Clematis socialis;*

(2) The location of any additional populations of *Clematis socialis* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Clematis socialis.*

Final promulgation of the regulation on *Clematis socialis* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Endangered Species Field Station (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Kral, R. 1982. A new *Clematis* from northeastern Alabama. Rhodora 84:285–291.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the South. USDA, Forest Service Technical Publication R8–TP2, pp. 409–412.

Author

The primary author of this proposed rule is Ms. Cary Norquist, Endangered Species Field Station, U.S. Fish and Wildlife Service, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39213 (601/960–4900 or FTS 490–4900).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Ranunculaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Ranunculaceae—Buttercup family:						
Clematis socialis	Alabama leather flower	U.S.A. (AL)	E		NA	NA

Dated: November 1, 1985.

P. Daniel Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–28949 Filed 12–5–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 235
Friday, December 6, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Import Limitation; Country of Origin Quota Adjustment

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of country of origin adjustment for 1,699,746 pounds (771 metric tons) of the quota for certain chocolate crumb from Australia.

SUMMARY: Presidential Proclamation 4708 issued December 11, 1979, amended Headnote 3(a) of Part 3 of the Appendix to the Tariff Schedules of the United States to permit the Secretary of Agriculture to make country of origin adjustments for unlicensed quotas that will not be filled by the country or origin listed opposite the quota. This notice implements such and adjustment with respect to 1,699,746 pounds (771 metric tons) of the quota quantity assigned to Australia for chocolate containig over 5.5 percent by weight of butterfat provided for in item 156.30, part 10, schedule 1 of the Tariff Schedules of the United States.

DATE: Effective December 9, 1985.

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, Room 6616 South Building, Department of Agriculture, Washington, D.C. 20250 or telephone at (202) 447-5270.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512-1 and has been determined to be "nonmajor" since it will not have any of the significant effects specified in those documents. Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service, hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The adjustment of the country of origin from which the quota item specified herein may be entered does not effect the ability of importers to import this quota item, but only expands the number of countries from which the item may be imported. Also, since this action is being taken in recognition of changes in the market which have already occurred, this action will not cause any new economic impact.

An assessment of the impact of this rule on the environment was made and, based on this evaluation, this action is not a major federal action and will have no foreseeable significant effects on the qulity of the human environment. Consequently, no environmental impact statement is necessary for this proposed rule.

Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) sets forth import limitations imposed on certain dairy products, including certain chocolate.

Headnote 3(a)(iii) of that Appendix allows for reallocating the quota amount of a dairy article listed in that Appendix among the countries of oorigin specified for a given article if it is determined that the quota amount assigned to a particular country is not likely to be entered from that country within a given calendar year. I hereby determine that it is not likely that 1,699,746 pounds (771 metric tons) of the amount of chocolate crumb specified in TSUS Item 950.15 for Australia will be entered from that country during calendar year 1985.

Notice is hereby given that 1,699,746 pounds (771 metric tons) of the 1985 quota quantity for chocolate crumb specified in TSUS Item 950.15 for Australia may be imported from Ireland, the United Kingdom, the Netherlands, Australia and New Zealand for the remainder of the 1985 quota year.

This quota quantity for TSUS Item 950.15 will revert to the original supplying country on January 1, 1986.

Issued at Washington, DC, this 22nd day of November 1985.

Leo V. Mayer,

Administrator, FAS.

[FR Doc. 85-28952 Filed 12-5-85; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-791-502]

Low-Fuming Brazing Copper Rod and Wire From South Africa; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that low-fuming brazing copper rod and wire from South Africa is being sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening to materially injure, a United States industry.

EFFECTIVE DATE: December 6, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Raymond G. Busen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377-2613 or (202) 377-3464.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that low-fuming brazing copper rod and wire from South Africa is being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). For low-fuming brazing copper rod and wire sold by McKechnie Brothers S.A. (Pty.) Limited, the only known exporter of the subject merchandise, we have found that the foreign market value exceeded the United States price on 26 percent of the sales compared. The margin of dumping ranged from 8 percent to 27 percent. The weighted-average was 3.30 percent.

Case History

On February 19, 1985, we received a petition in proper form from American Brass, Century Brass, and Cerro Metal Products of Meadows, IL, Waterbury, CT, and Bellefonte, PA, respectively.

filed on behalf of the U.S. low-fuming brazing copper rod and wire industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from South Afirca are being, or are likely to be, sold in the United States at less than fair value within the meaning of Section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry. On May 10, 1985, a letter supporting the petition was filed by J.W. Harris Company of Cincinnati, OH, another producer of low-fuming brazing rod and wire.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on March 11, 1985 (50 FR 10524), and notified the ITC of our action.

On April 5, 1985, the ITC found that there is a reasonable indication that imports of low-fuming brazing copper rod and wire from South Africa are materially injuring, or threatening material injury to, a U.S. industry (USITC Pub. No. 1673, April 1985).

On March 22, 1985, we presented a questionnaire to counsel for the manufacturer McKechnie Brothers S.A. (Pty.) Limited (McKechnie), who accounts for all South African exports of the subject merchandise to the United States. On May 28, 1985, we received a reply to the questionnaire.

Pursuant to a request made by the petitioners, on July 9, 1985, we extended the period for making the preliminary determination until September 17, 1985 (50 FR 28826).

Also on July 9, 1985, the petitioners alleged that the respondent's home market sales were at prices below the cost of production and requested that the Department conduct a cost investigation. We therefore requested that McKechnie respond to a cost questionnaire. We received a reply to the cost questionnaire on August 21, 1985.

On October 3, 1985, McKechnie submitted an amended reply to the cost questionnaire

We published a preliminary determination of sales at less than fair value on September 23, 1985 (50 FR 38567). Our notice of the preliminary determination provided interested parties with an opportunity to submit views orally or in writing.

We made fair value comparisons between sales of such or similar merchandise which was sold by McKechnie in both the United States and South African markets. Such merchandise comprised 88 percent of McKechnie's sales to the United States.

Standing

On March 20, 1985, Aufhauser Brothers Corporation ("Aufhauser") requested that we rescind our initiation of this investigation, alleging that the petitioners had not filed "on behalf of" the domestic industry, as required by section 732 of the Act. This allegation was also raised in the context of our countervailing duty investigation of low-fuming brazing copper rod and wire from South Africa. We investigated and found in the preliminary countervailing duty determination that there is no reason to conclude that petitioners do not have standing (50 FR 21328). We have received no further evidence to change that determination, as stated in our final countervailing duty determination (50 FR 31642).

Scope of Investigation

The products covered by this investigation are low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimension in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated, currently classified in the *Tariff Schedules of the United States Annotated* (TSUSA) under items 612.6205, 612.7220 and 653.1500. The chemical composition of the products under investigation is defined by Copper Development Association (CDA) standards 680 and 681.

Fair Value Comparison

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 to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the CIF packed price to unrelated customers in the United States. We made deductions, where appropriate, for brokerage, handling, inland freight and inland insurance charges in South Africa, ocean freight, marine insurance, and rebates.

Foreign Market Value

We compared the cost of production provided by McKechnie with their home market selling prices and found that no sales were made at less than cost over an extended period of time, in substantial quantities, and at prices not permitting recovery of all costs within a reasonable period of time. We therefore used home market sales prices to determine foreign market value.

We calculated foreign market value based on home market prices on the basis of delivered prices to unrelated purchasers. From these prices we deducted, where appropriate, inland freight, rebates, and cash settlement discounts. We made adjustments, where appropriate, for differences in credit expenses in accordance with § 353.15 of our regulations (19 CFR 353.15), and differences in physical characteristics in accordance with § 353.16 of our regulations (19 CFR 353.16). We deducted home market packing costs and added U.S. packing.

We disallowed claimed adjustments for warehouse labor and inventory financing costs because these costs did not bear a direct relationship to the sales which are under consideration as required by § 353.15.

Verification

As provided in section 776(a) of the Act, we verified data used in making this determination by using verification procedures which included examination of company records and selected original source documentation containing relevant information.

Petitioners' Comments

Comment 1. Notwithstanding the verification of McKechnie's reported cost data, the petitioners believe those data are unduly low in comparison to the U.S. producers's costs and should not be relied upon by the administering authority in its determination.

DOC Position. The Department verified the accurancy of the cost data submitted by respondent. Information submitted by petitioners was considered for purposes of reviewing respondent's cost data and provided no indication that respondent's data were inaccurate

or unrepresentative of the actual cost incurred by respondent.

Comment 2. Petitioners argue that, since loans from McKechnie's shareholders to McKechnie are related-party transactions, the Department should use an imputed interest rate for these loans in calculating the cost of production. Petitioners state that, if these loans had not been made, McKechnie would have had to borrow the funds from unrelated sources.

DOC Position. The money from shareholders in these transactions is treated as equity in the audited financial statements of McKechnie. The provision by the shareholders of capital under the terms of these transactions, particularly their indeterminate duration, and the treatment accorded them in the financial statements, indicate that they should be treated as part of the equity participation of the shareholders rather than as traditional debt instruments.

Comments 3. Petitioners argue that no allowance should be made for quantity or loyalty discounts.

DOC Position. We agree. See our position with regard to respondent's comment 2.

Comment 4. Petitioners argue that McKechnie has not provided the necessary information on credit expense related to a certain U.S. sale. Petitioners state that McKechnie has not provided information on the currency in which interest is to be paid or on the actual interest rates incurred. Further, petitioners argue that even if borrowings are dollar-denominated, the actual interest rate is greater than the nominal rate due to exchange risks. Petitioners further argue that absent necessary information concerning these borrowings, the Department should use South African interest rates when calculating the credit expense associated with this U.S. sale.

DOC Position. The Department has verified that borrowings associated with the U.S. sale in question were dollar-denominated. Further McKechnie used its dollar receipts from the sale to repay the loan thereby avoiding exchange risks. For a discussion of how we calculated U.S. credit expense, see our position with regard to respondent's comment 4.

Comment 5. Petitioners argue that the Department, in calculating net home market prices, should deduct early payment discounts only on sales for which payment was made within 30 days.

DOC Position. We disagree. We have based our calculations on the verified net price received by McKechnie. Whether or not an early payment discount was in fact warranted is irrelevant to this calculation.

Comment 6. Petitioners argue that no adjustment should be made for McKechnie's home market indirect selling expenses for warehouse labor and inventory financing.

DOC Position. We agree. See our position below with regard to respondent's comment 5.

Comment 7. Petitioners argue that the Department should made any necessary currency conversions at the exchange rates certified by the Federal Reserve Bank of New York for the dates of purchase of McKechnie's sales to the United States.

DOC Position. We agree. This is in accordance with § 353.56 of our regulations.

Respondent's Comments

Comment 1. Respondent argues that in calculating United States price for a particular sale to the United States which was denominated in U.S. dollars, the Department should convert the sales price to South African rands at the rate McKechnie negotiated with its bank, and make any necessary deductions in rands, not rands converted to U.S. dollars.

DOC Position. We disagree. Inasmuch as this is a "purchase price" transaction, we are required by § 353.56 of our regulations to make currency conversions at the exchange rate certified by the Federal Reserve Bank of New York as of the date of purchase. Further, it is our policy to make comparisions for U.S. sales denominated in dollars by converting any deductions denominated in foreign currency to dollars.

Comment 2. Respondent argues that in calculating net home market prices, the Department should make a deduction in an amount equal to the difference in the "quantity discount" given to McKechnie's single United States customer and the "quantity discount" given McKechnie's largest home market customer.

DOC Position. We disagree. The record indicates that "quantity discounts", as such, do no exist in either market. Sales prices to the United States are individually negotiated. Prices to McKechnie's largest home market customer are calculated by adding to a basis price size extras and deducting a "quantity allowance". In fact, the "quantity allowance" was deducted in McKechnie's price calculation for every sale to this customer, regardless of the quantity purchased.

Comment 3. Respondent argues that in calculating net home market prices, the Department should disregard sales to other then the largest home market customer.

DOC Position. We agree. During the period of investigation, 94 percent of McKechnie's home market sales were to a single customer. The prices for all of these sales were calculated using the same basis price. The remaining six percent of McKechnie's home market sales were to number of small customers. Prices for these sales were calculated using basis prices higher than the single basis price used for the large customer. Section 353.20(b) of our regulations specifies that "If not less than 80 percent of all sales in the home market (or to third countries, if appropriate) during the period of investigation were made at the same price, weighted averages of all sales will not be used and foreign market value will be based upon the sales at the price." Since 94 percent of the sales here were all calculated using the same basis price, we have based foreign market value on those sales.

Comment 4. Responent argues that the Department failed to make an adjustment due to the lower interest rates received for credit on U.S. sales. On U.S. dollar-denominated sales, McKechnie borrowed U.S. dollars which it immediately deposited in its South African overdraft account, thus reducing the overdraft and the interest due. When McKechnie recived dollars in payment for the sale it used these dollars to repay the dollar loan. Thus, McKechnie was able to borrow at the lower U.S. interest rate thereby reducing its rand interest expense. Respondent claims the Department failed to consider the lower interest rates.

DOC Position. In both the preliminary determination and this final determination, we have calculated interest expense for both markets based on interest rates actually incurred. For a particular U.S. sale, McKechnie incurred interest expense based on U.S. interest rates. To the extent that U.S. sales have lowered the rand interest expense by reducing the company's overdraft account, we have accounted for it by looking at the actual interest expense. Any further adjustment would be double counting.

Comment 5. Respondent argues that in calculating net home market prices the Department should make an adjustment for warehouse labor and inventory interest expenses.

Doc Position. These expenses are the result of maintaining LFB inventory in McKechnie's warehouse prior to sale. No adjustment is warranted because the expenses do not bear a direct relationship to the sales which are under

consideration as required by § 353.15(a) of our regulations.

Comment 6. Respondent argues that in calculating net home market prices, the Department should make an adjustment for rebates McKechnie pays its largest customer based upon rebates *earned* by the customer during the six-month period of investigation rather than upon rebates *paid* to the customer during the period of investigation.

Doc Position. We agree that the most logical basis for making this adjustment is the rebates earned by the customer during the period of investigation since these are most closely tied to the sales under consideration. Furthermore, during the verification we tested the representativeness of this figure and found that it did not differ significantly from a figure based upon rebates *paid* over the course of McKechnie's fiscal year which completely encompassed the period of investigation.

Comment 7. Respondent argues that the local transport cost on a per ton basis incurred by McKechnie's Local Transport Department should be calculated by dividing the total tons of finished product shipped into the total expenses of the Department. Shipments of scrap which are backhauled from customers to McKechnie do not result in additional expense and should not be considered in calculating the per ton cost of local transport deliveries.

Doc Position. We agree.

Continuation of Suspension of Liquidation

We are directing the United States Customs Service to continue to suspend liquidation of all entries of low-fuming brazing copper rod and wire from South Africa that are entered, or withdrawn from warehouse, for consumption, on or after September 23, 1985, the date of publication of the preliminary determination in the **Federal Register**. The United States Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The bond or cash deposit amounts established in our preliminary determination of September 23, 1985, remain in effect with respect to entries or withdrawals made prior to the date of publication of this notice in the **Federal Register**. With respect to entries or withdrawals made on or after the publication of this notice, the bond or cash deposit amounts required are shown below.

Manufacturer/producer/exporter	Weighted-average margin percentage
McKechnie Brothers S.A. (Pty.) Ltd	3.30
All others	3.30

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice. 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. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on low-fuming brazing copper rod and wire from South Africa 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)).

Gilbert B. Kaplan,

Acting Assistant Secretary for Trade Administration.

December 2, 1985.

[FR Doc. 85-29026 Filed 12-5-85; 8:45 am]

BILLING CODE 3510-OS-M

[A-588-502]

Nylon Impression Fabric From Japan; Preliminary Determination of Sales at Not Less than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that nylon impression fabric from Japan is not being, nor is likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. This investigation covers only imports by or for the account of Shirasaki Tape Co., Ltd. (Shirasaki) and Asahi Chemical Industry Company, Ltd. (Asahi). There is an outstanding antidumping duty finding on this merchandise (43 FR 22481, May 25, 1978). However, Asahi and Shirasaki were specifically excluded from that finding.

If this investigation proceeds normally, we will make our final determination by February 1, 1986.

EFFECTIVE DATE: December 6, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Thran or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3963 or 377-5288.

Preliminary Determination

We have preliminarily determined that nylon impression fabric from Japan is not being, nor is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(b)) (the Act). We made fair value comparisons on approximately 90 percent of respondents' sales of the class or kind of merchandise to the United States during the period of investigation. Comparisons were based on the United States purchase price and the home market price. The weighted-average margin for Asahi is 0.08 percent. This is *de minimis*. Shirasaki had no sales at less than fair value.

Case History

On June 10, 1985, we received a petition from Bomont Industries and Burlington Industries, Inc., on behalf of the domestic nylon impression fabric industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of nylon impression fabric from Japan 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, and that these imports are materially injuring, or are threatening material injury to, a United States industry. There is an outstanding antidumping duty finding on this merchandise (43 FR 22481, May 25, 1978). However, Asahi and Shirasaki were specifically excluded from this finding. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation on merchandise produced

by or for the account of Asahi and Shirasaki. We notified the ITC of our action and initiated such an investigation on July 1, 1985 (50 FR 28111). On July 25, 1985, the ITC determined that there is reasonable indication that imports of nylon impression fabric from Japan are materially injuring a U.S. industry (50 FR 31053).

On August 6, we presented antidumping duty questionnaires to Asahi and Shirasaki. We received the responses on September 20, 1985. On November 8, 1985, petitioners alleged that Asahi was selling nylon impression fabric in Japan during the period of investigation below its cost of production. We will investigate this allegation for our final determination.

Products Under Investigation

The merchandise covered by this investigation consists of nylon impression fabric from Japan woven from continuous filament yarns of nylon; whether texturized or non-texturized; finished; whether slit or uncut; and not inked for use in typewriters and printers; and currently classifiable under item numbers 347.6020, 338.5001, and 338.5002 of the *Tariff Schedules of the United States, Annotated*, produced by or for the account of Asahi and Shirasaki.

We have determined that inked ribbon is not the same class or kind of merchandise as unkind nylon impression fabric and that it is not within the scope of this investigation.

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 Asahi sold the Merchandise to unrelated Japanese trading companies knowing that it was destined for the United States, we used the packed price to the Japanese trading companies to represent the United States price. We deducted foreign inland freight.

As Shirasaki sold the merchandise to unrelated U.S. purchasers prior to importation into the United States, we used the purchae price to ths subject merchandise, as provided in section 772(b) of the Act, to represent the United States price. We calculated the purchase price based on the F.O.B., C&F, or C.I.F. packed price to United States purchasers. We deducted brokerage, foreign inland freight, ocean freight, and marine insurance, where appropriate.

Foreign Market Value

As there were sufficient home market sales to consititute a basis for comparision, we calculated foreign market value based home market price, in accordance with section 773(a) of the Act. We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, pursuant to § 353.16 of our regulations.

For Asahi, we deducted rebate costs from home market price. For Shirasaki, we deducted inland freight. For both companies, we made adjustments for differences in circumstances of sale related to credit expense pursuant § 353.15 of our regulations. We also made adjustments for differences in packing costs.

In calculating foreign market value, we made currency conversions from Japanese ven to United States dollars in accordance with § 353.56(a) of our regulations, using certified daily exchange rates.

Verification

In accordance with section 776(a) of the Act, we will verify the information provided by the respondents by using standard verification procedures, including examination of relevant sales and financial records of the company.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m., on December 18, 1985, at the U.S. Department of Commerce, Room 5611, 14th Street and Constitution Avenue, NW., Washington, DC. 20230. Individuals who wish to participate in the hearing must submit to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending, and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by December 11, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

November 27, 1985.

[FR Doc. 85-29027 Filed 12-5-85; 8:45 am]

BILLING CODE 3510 DS-M

[C-585-504]

Preliminary Negative Countervailing Duty Determination; Country Tubular Goods from Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of oil country tubular goods (OCTG) in Taiwan. The estimated subsidy is 0.11 percent *ad valorem*. This rate is *de minimis*, and therefore our preliminary countervailing duty determination is negative.

If this investigation proceeds normally, we will make our final determination by February 13, 1986.

EFFECTIVE DATE: December 6, 1985.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0189 (LaCivita) or 377-2830 (Martin)

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that the following programs are countervailable:

- Preferential Export Financing.
- Export Loss Reserves.

We preliminarily determine the estimated net countervailable benefits for oil county tubular goods to be 0.11 percent *ad valorem*. Although we have determined these programs to be countervailable, the respondent received *de minimis* benefits during the review period. Therefore, we determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended, are being provided to manufacturers, producers or exporters of oil country tubular goods in Taiwan.

Case History

On July 22, 1985, we received a petition in proper form filed by the Lone Star Steel Company and CR&I Steel Corporation, producers of oil country tubular goods. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters of oil country tubular goods in Taiwan directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. In addition, the petition alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 12, 1985, we initiated the investigation (50 FR 33384).

Since Taiwan is entitled to an injury determination under the section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry, Therefore, we notified the ITC of our initiation. On September 5, 1985, the ITC determined that there is a reasonable industry (50 FR 37066).

On August 20, 1985, we presented a questionnaire concerning the petitioners' allegations to the American Institute on Taiwan in Washington, D.C. Responses to the questionnaire were received on September 20, 1985 and September 23, 1985.

On September 23, 1985, we received a timely request by petitioners for an extension of the deadline date for the preliminary determination. An extension was granted on September 26, 1985, (50 FR 40580). We stated that we expect to issue our preliminary determination by November 29, 1985.

There is only one known producer of oil country tubular goods in Taiwan, the Far East Machinery Company, Ltd (FEMCO). China Steel Corporation (CSC), a state-owned supplier of pipe and tube inputs, responded to the Department's questionnaire concerning preferentially-priced inputs.

Because of the extension of the preliminary determination, we were able to verify the responses to the questionnaires submitted by the authorities on Taiwan, the Far East Machinery Company and China Steel Corporation. Verification was conducted in Taiwan from October 15, 1985 to November 5, 1985.

Scope of the Investigation

The product covered by this investigation is "oil country tubular goods," which are hollow steel products of circular cross-section intended for use in drilling for oil or gas. These products include oil well casings, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA) under items 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244. This investigation includes oil country tubular goods that are in both finished and unfinished condition.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

For purposes of this preliminary determination, the period for which we are measuring subsidies (the review period) is calendar year 1984. Based upon our analysis of the petition, the responses to our questionnaires submitted by the Taiwan authorities, FEMCO, China Steel Corporation, and the amended response submitted after verification, we preliminarily determine the following:

I. Programs Preliminarily Determined To Be Countervailable

We preliminarily determine that the following programs provide countervailable benefits to manufactures, producers, or exporters of oil country tabular goods in Taiwan:

A. Preferential Export Financing

The Export Loan Discount Regulations of the Central Bank of China permit registered exporters in possession of a letter of credit to apply for low-cost export loans covering up to 85 percent of the value of the export transaction. Export loans are arranged through authorized foreign-currency banks, which may apply for an interest-rate accommodation from the Central Bank. Exporters settle the loan with foreign exchange within 180 days or pay an interest-rate penalty on the full amount of the loan.

The Central Bank sets the maximum and minimum interest rates for commercial lending in Taiwan. Export loans are set at rates equal to or below the minimum rates established for commercial lending.

The response indicates that FEMCO obtained export loans to finance exports of the products under investigation to the United States. Because these loans are contingent upon export performance and provide funds to borrowers at interest rates lower than those available for other purposes, we preliminarily determine that this program confers an export subsidy. To calculate the benefit, we compared the Central Bank's export-loan rate with its maximum short-term loan rate. We then multiplied the difference by the principal amount and allocated the benefit over the value of Femco's exports to the United States of the products under investigation. The extimated net subsidy is 0.10 percent *od valorem*.

B. Export Loss Reserves

Article 31 of the Statute for Encouragement of Investment (SEI) permits exporters to establish an export loss reserve of up to one percent of the previous year's export exchange settlement to be used exclusively for compensating export losses. Companies treat the export loss reserve as a business expense and deduct it from taxable income in one year, then settle the account and carry the reserve funds forward as taxable income for the next year. FEMCO maintained an export loss reserve during the review period.

Because this program is contingent upon export sales, we preliminarily determine that it confers a benefit which constitutes an export subsidy. To

calculate the benefits, we treated tax savings from the export loss reserve as a one-year interest-free loan. We compared the interest-free rate with the maximum lending rate set by the Central Bank. Dividing the benefit by the value of FEMCO's total 1984 exports, we found the estimated net subsidy to be 0.01 percent *ad valorem.*

II. Programs Preliminarily Determined Not To Confer Subsidies

We preliminarily determine the following programs do not confer subsidies on the manufacturers, producers or exporters of oil country tabular goods in Taiwan:

A. Business Tax Exemptions for Export Sales

The authorities on Taiwan levy a business tax on selling goods, rendering services or other profit seking activities within the territory of Taiwan. Article 29 of the SEI exempts export sales, which include sales to trading companies and to manufacturers for further processing before export, from the business tax. The response indicates that the amount of the exemption equals the amount of business tax due on each sale destined for export. Under the Act, the non-excessive rebate or exemption of indirect taxes levied at the final stage is not considered a subsidy. This exemption of indirect business taxes can be characterized as a remission of indirect taxes. Because the amount of the exemption is not greater than the amount of business tax due, we preliminarily determine that this program does not confer countervailable benefits within the meaning of the countervailing duty law.

B. Stamp Tax Reductions

The authorities on Taiwan levy a stamp tax on sales invoices. Article 33 of the SEI permits the reduction of the stamp tax from 0.4 percent to 0.1 percent for all invoices issued by a profit-seeking enterprise for transactions exempt from the business tax. The response indicates that the stamp tax reduction is less than the amount of stamp tax due on each sale destined for export. Under the Act, the non-excessive rebate or exemption of indirect taxes levied at the final stage is not considered a subsidy. Since the amount of the reduction is not greater than the amount of the stamp tax due, we preliminarily determine that this program does not confer countervailable benefits within the meaning of the countervailing duty law.

C. Preferential Prices for Raw Materials

We initiated an investigation based on information provided by the petitioner in Welded-Carbon Steel API Line Pipe from Taiwan (50 FR 32250), that the Taiwan authorities direct China Steel Corporation (China Steel) to provide coil at preferential prices to exporters. Under item (d) of thelllustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, a price preference for inputs used in the production of export goods constitutes a subsidy only if the preference lowers the price below world-market levels (See, "Final Negative Countervailing Duty Determination: Certain Steel Wire Nails from the Republic of Korea," 47 FR 39549).

In its response, China Steel, a state-owned corporation and a supplier of pipe and tube inputs, stated that it does have a two-tiered pricing policy. The first-tier price is applicable to domestic producers who manufacture goods for the Taiwan market. It is based on the landed, duty-paid price of imported hot-rolled coil. The second-tier price is offered to manufacturers who purchase coil to produce export products and is based on the landed, duty-free price of hot-rolled coil. The response indicates that both the first- and second-tier prices are set at or above world-market prices. Therefore, we preliminarily determine that this program does not confer benefits which constitute subsidies on exports of the subject merchandise.

D. Preferential Income Tax Ceiling—25 Percent

Petitioners allege that manufacturers, producers or exporters of oil country tubular goods in Taiwan benefit from a preferential income tax ceiling. Article 15 of the SEI permits productive enterprises and big trading companies to pay no more than 25 percent in corporate income taxes on income exceeding NT$500,000 rather than the 35 percent required by Taiwan's graduated corporate income tax law.

The responses indicate that Article 15 benefits are available to all productive enterprises, defined in the SEI as stock companies engaged in manufacturing, handicraft, mining, agriculture, forestry, fishery, animal husbandry, transportation, warehousing, public utilities, public facility construction and development, public housing construction, technical services, hotels and heavy machinery construction.

In prior cases, we found this program to be a subsidy based upon insufficient evidence that the program is non-specific. However, the evidence in this case indicates that these benefits are not limited to an industry or enterprise or group of industries or enterprises. Therefore, we preliminarily determine that this program does not confer countervailable benefiits within the meaning of the countervailing duty law.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs are not used by the manufacturers, producers, or exporters of oil country tubular goods in Taiwan:

A. Preferential Income Tax Ceiling—22 Percent

Article 15 of the SEI also permits enterprises engaged in the basic metal production industry, heavy machinery industry, petrochemical industry or other important productive enterprises which conform with the needs for development of economic and national defense industries and are capital-intensive and/or technolgy-intensive in nature to use a marginal tax rate of no more than 22 percent. The response stated that Femco did not use the 22 percent tax ceiling. Therefore, we preliminarily determine this program not to be used.

B. Accelerated Depreciation and Tax Holiday

Article 6 of the SEI permits newly-established productive enterprises to select one of the following benefits: (1) A tax holiday of up to five years providing the company depreciates its assets according to Taiwan's Service Life of Fixed Assets; or (2) accelerated depreciation on the service life of machinery, equipment and buildings, construction facilities, and communication and transportation facilities. In addition, Article 6 permits expanding enterprises to select (1) a tax-holiday of up to four years on the income derived from increased capacity, if it depreciates its assets according to Taiwan's Service Life of Fixed Assets, or (2) a rapid depreciation of the newly purchased equipment beginning in the year in which the machines begin operation.

The response stated that Femco did not claim accelerated depreciation or take a tax holiday during the period of review. Therefore, we preliminarily determine this program not to be used.

C. Tax Credit for Investment in Production Equipment

Under Article 10 of the SEI, productive enterprises may deduct from income tax payable an amount of up to 15 percent of the value of capital equipment purchased during the year. In the event that the amount of the tax credit exceeds the value of income tax payable, the balance may be carried forward for up to four subsequent years.

The response stated that FEMCO did not claim this credit on the tax return filed during the review period. Therefore, we preliminarily determine this program not to be used.

D. Duty Exemptions and Deferral on Imported Equipment

Article 21 of the SEI allows productive enterprises to pay import duties in a series of installments beginning one year from the date of importation on selected machinery and equipment that is not manufactured domestically. In addition, qualified enterprises may be exempt from paying import duties on selected machinery and equipment which is used for the establishment or expansion of an approved project or for research and development.

The response stated that FEMCO did not receive duty exemptions or deferrals. Therefore, we preliminarily determine this program not to be used.

E. Preferential Long-Term Loans

Article 84 of the SEI permits the Executive Yuan to establish and administer a special development fund to promote investments of interest to national economic development. The response stated that FEMCO did not use Article 84 financing in relation to the products under investigation. Therefore, we preliminarily determine this program not to be used.

Preliminary Negative Determination of Critical Circumstances

Petitioners alleged that imports of oil country tubular goods from Taiwan present "Critical circumstances." Under section 703(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that (1) the alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement of Tariffs and Trade ("the Subsidies Code"), and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Based upon our analysis, the export subsidies bestowed upon oil country tubular goods in Taiwan are *de minimis*.

Accordingly, we preliminarily determine that this subsidy is not inconsistent with the Subsidies Code.

Since we have determined the the subsidies are not inconsistent with Code commitments, we need not determine whether there have been massive imports. Accordingly, we preliminarily determine that "critical circumstances" do not exist with respect to oil country tubular goods from Taiwan.

Verification

In accordance with 776(a) of the Act, we conducted a verification of the information provided in the questionnaire response. Our final determination will be based on verified information.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after publication of our notice in the **Federal Register.**

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on January 9, 1986 at the U.S. Department of Commerce, Room 1412, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice.

Requests for a hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by January 2, 1985. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 335.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

November 29, 1985.

[FR Doc. 85-29038 Filed 12-5-85; 8:45 am]

BILLING CODE 3510-DS-M

Patent and Trademark Office

Policy and Plans Regarding Exchange Agreements; Competitive Procurement Contracts; Electronic Patent Data Dissemination Guidelines

Background

Under the authority of section 6(a) of title 35, United States Code, the Patent and Trademark Office (PTO) entered into exchange agreements with non-Federal entities to further the use of patent and trademark information and to facilitate the availability of that information. Some of these agreements will be converted to procurement contracts through competitive solicitations or assistance instruments, as appropriate. Toward this objective, the PTO establishes the following guidelines that shall apply to these conversions and to any subsequent business arrangements of a similar barter or exchange nature with private firms involving ADP resources. An inventory and description of the exchange agreements is also provided. Exchange agreements that will not be converted are identified and the reason for their exclusion explained.

Guidelines

From time to time the PTO needs goods and services to accomplish its goals for which it may offer other goods and services of comparable value as consideration rather than money. Such agreements may be considered for a particular goal that might otherwise not be reached, in gaining access to published information and/or electronic data and/or in fostering the dissemination of intellectual property information. In return for goods and services it needs, the PTO may offer any or all of the following as full or partial

compensation to the provider: (1) Copies of PTO documents, (2) electronic data developed by the PTO from patents, trademark applications, trademark registrations, and other data sources, (3) Government-furnished equipment, and (4) other data and information resulting from special projects that may be undertaken. The use of consideration other than money will be in accord with the objectives of the Exchange Agreement provisions of Pub. L. 97–247.

Regardless of the barter or exchange nature and/or provisions of such arrangements, they will be developed as procurement contracts conforming to applicable procurement statutes and Federal Acquisition Regulations or assistance instruments as described in Pub. L. 95–224. Services which involve the delivery of ADP services will additionally conform to the Federal Information Resource Management Regulations. Agreements which have as their primary purpose the delivery of services to the public will be processed as assistance instruments under the provisions of the Grant and Cooperative Agreements Act of 1977, Pub. L. 95–224.

In seeking competitive procurements to replace exchange agreements, whenever possible, solicitation documents will (1) describe PTO needs in functional terms, (2) set forth the method that will be used in evaluating proposals, and (3) indicate the factors that will be considered and their relative weight or importance. Factors and weights will be based on the needs of the PTO and the interests of the public. When solicitation documents are ready for release, announcements will be published in the *Commerce Business Daily* (CBD) to inform prospective offerors of the date of the release. The PTO will competitively acquire the services of an independent audit or accounting firm to assign a fair market value to non-monetary consideration received or provided to assist in evaluating offers.

Contracts and assistance instruments will be awarded for one year with options for additional years, if required. The number of option years will be sufficient to provide an incentive for competitors to investment in an offering, but not for such a long period that future competition would be unreasonably limited.

Exclusive licenses will not be issued to any foreign owned firm or to any subsidiary or affiliate of a foreign owned firm. When feasible, competitive procurements will be structured to favor non-exclusive licenses. In any case, an exclusive license shall not impair the ability of the public to obtain data in a form historically provided by the PTO or in some equivalent form not subject to license restrictions. Licensees will not be entitled to obtain patent or trademark information not accessible by the public.

Exchange Agreements To Be Converted by Competitive Procurement

Exchange agreements now in effect that are to be converted through competitive solicitations are listed below. The tentative date for issuance of the solicitation document is shown for each.

Exchange of Trademark Data and Information With Thomson and Thomson

Under an agreement with Thomson and Thomson (T&T), of 1 Monarch Drive, North Quincy, MA 02171, digitized images of the figurative elements of active trademark registrations in effect in 1983 and to be registered during the subsequent 10 year period were or are to be provided to the PTO. The same figurative elements were or are to be coded for retrieval using a coding system and manual developed jointly by T&T and the PTO. The textual information contained in trademark applications and other trademark documents for the period from 1984 to 1992 were or are to be provided. All data furnished or to be furnished by T&T were or are to be provided on magnetic tape in an agreed-upon format and standard. In return for this electronic data, the PTO furnished or will furnish paper copies of registration, application, and other Office documents, copies of Trademark *Official Gazettes* (OG), certain microfilm equipment, reports from certain special studies and analyses and electronic data representing updates to the text data base of active trademark registrations for the period corresponding to the term of the agreement, from 1984 to 1992.

It is contemplated that the provisions of this exchange agreement will be ended and the substacce of it will be converted by one or more competitive procurements for different types of data. The solicitations are planned to issue in February or March, 1986.

Exchange of Patent Data and Information With Derwent

Under an agreement with Derwent, Inc., of 684 Elm Street, Suite 500, McLean, VA 22101, paper copies of copyrighted English Abstracts of Derwent's coverage of world patents and electronic data corresponding to the bibliographic data and alerting abstracts of certain Derwent files (CPI, WPI, and EPI) are provided to the PTO. In addition, a royalty credit of 300 hours connect time to Derwent data available on-line from time-sharing services is provided. The PTO furnishes Derwent paper or microfilm copies of foreign patents it receives from other patent officies, for pick-up at those offices, *OG* copies, and the following electronic U.S. patent data: patent bibliographic data with all claims, the Patent Master Classification File and the Patent Assignment Transaction Data File (backfile and updates).

This agreement, will be ended and the substance of it together with some additional data, data uses, and services will be converted by competitive procurement. The solicitation is planned to issue in March or April, 1986.

Exchange of Services and Patent Data With Mead Data Central

Mead Data Central, of P.O. Box 933, Dayton, OH 54401, provides services related to the use of its on-line data systems (LEXPAT, LEXIS, NEXIS) in the amount of service credits of $77,000 annually to the PTO. In return, the PTO has or is furnishing to Mead Data Central, the following electronic data: the Patent Full Text File (backfile and updates), the Patent Assignment Transportation Data File, the Manual of Classification File, and the file of the Index to U.S. Patent Classification and paper copies of Certificates of Correction and Notices of Litigation.

This agreement will be converted by competitive replacement or, alternatively, will be terminated. If a competitive acquisition is to be undertaken, the solicitation is planned to issue approximately in March, 1986; if it is to be terminated, it is planned to be terminated by October, 1986.

Exchange of Patent Data and Information with Research Publications, Inc.

Under an exchange agreement with Reseach Publications, Inc., of 12 Lunar Drive, Woodbridge, CT 06525, the PTO receives COM-generated 16mm microfilm of its classification data files in two sequences. The magnetic tape files are provided to Research Publications every six months in the record format in which it is normally produced through the PTO maintenance program.

The PTO plans to terminate this exchange agreement in September, 1986.

Exceptions to Conversion by Competitive Acquisitions

Exchange agreements that are to be replaced by other than competitive procurements are listed below. The reason for the exception is given.

Exchange With Compu-Mark S.A. Related To Trademark Backfile Data

Under the exchange agreement with N.V. COMPU-MARK S.A. (CM) of P.O. Box 61, B2510 Mortsel, Belgium, CM provided or will provide the PTO with electronic data on magnetic tape consisting of the text data in all tradmark registrations active in 1983 and registered before 1980 and of the character data contained in the assignment index cards as of 1984. The PTO provided or is providing CM with paper copies of the active registrations found in its bound volumes, assignment index cards, and other PTO documents and electronic copies of the text data corresponding to new registrations and applications post-1979 and other trademark case data for the period from 1983 to 1992.

The PTO intends to procure data obtained from CM on a sole source basis, as previously advertised in the *CBD* on December 15, 1984. To the knowledge of the PTO, CM is the only source of this collection of data that meets the specifications of the PTO. The negotiated price is expected to be less than the cost of its replacement by other, competitive means. Estimates of the replacement cost obtained from other independent firms will be used to validate the final price, contract terms and conditions. The sole source award is planned to be completed by January 1986.

Exchange of Service and Patent Data With Pergamon Infoline

Pergamon Infoline (Pergamon) of 1340 Old Chain Bridge Road, McLean, VA 22101, provided or is providing the PTO with the following: electronic data corresponding to the bibliographic data, including abstracts, of approximately 130,000 U.S. patents issued between 1970 and 1974 for which no other electronic data are available in the PTO, services consisting of royalty credits in an amount of $10,000 annually applied to the use of Pergamon's on-line data base, and training of 300 patent examiners in the use of the Infoline system. The PTO furnishes Pergamon the following electronic data: the full text of the patent text backfile from 1975 to 1983, annual issuances of patent assignment transaction data, annual updates of patent bibliographic data with exemplary claims, annual issuances of the Patent Master Classification File; the annual issuance of the Attorney Roster File, periodic issuances of the Special Index Term File 364–200, and periodic issuances of the Special Index Term file 364–900.

The PTO plans to terminate this exchange agreement in September, 1986.

Administration

The PTO Administrator for Automation has been assigned responsibility for administering all exchange agreements, their replacement, or their termination. Any requests for additional information about the agreements now in effect should be addressed to: J. Howard Bryant, Administrator for Automation, Department of Commerce, U.S. Patent and Trademark Office, Washington, DC 20231.

Information on the competitive solicitations should be addressed to: Office of Procurement, Patent and Trademark Office, Box 6, Wahington, DC 20231.

At this time the PTO is seeking expressions of interest. Interested parties should write to the procurement office identified above citing the exchange agreement(s) for which subsequent receipt of a competitive solicitation is requested. Each competitive solication will be separately summarized in the CBD prior to issuance.

Dated: December 2, 1985.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 85–28975 Filed 12–5–85; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting an Import Limit for Certain Man-Made Fiber Apparel Products From the Republic of Korea

December 2, 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 December 6, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive dated December 21, 1984 (48 FR 50237) established limits for certain specified categories of cotton, wool and man-made fiber textile products, including Category 645/646 (man-made fiber sweaters), produced or manufactured in Korea and exported during the agreement year which began on January 1, 1985. At the request of the Government of the Republic of Korea, special carryforward in the amount of 45,216 dozen is being applied to the restraint limit for Category 645/646, increasing it from 3,332,224 dozen to 3,377,440 dozen for 1985. The 1986 limit for Category 645/646 will be adjusted to account for the carryforward used in the current year.

In addition, as a result of a data investigation which revealed statistical errors in import charges made to the limit for Category 645/646, 14,784 dozen are being deducted from those charges.

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.

December 2, 1985.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 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 Korea and exported during 1985.[1]

Effective on December 6, 1985, paragraph 1 of the directive of December 21, 1984 is hereby further amended to include an adjusted restraint limit for Category 645/646 of 3,377,440 dozen.[2]

You are further directed, effective on December 6, 1985, to deduct 14,784 dozen from the imports charged to the restraint limit established for Category 645/646 in the directive of December 21, 1984, as amended.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs

[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The restraint limit has not been adjusted to reflect any imports exported after December 31, 1984.

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. 85-28939 Filed 12-5-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1986; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1986 commodities to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: December 6, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 13, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (50 FR 37396) of proposed additions to Procurement List 1986, October 15, 1985 (50 FR 41809).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 52-2.5.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to provide the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1986:

Aerosol Paint, Lacquer

8010-00-721-9742	8010-00-721-9746
8010-00-079-2754	8010-00-721-9747
8010-00-141-2952	8010-00-721-9748
8010-00-721-9743	8010-00-721-9753
8010-00-584-3148	8010-00-141-2958
8010-00-721-9479	8010-00-721-9749
8010-00-141-2950	8010-00-721-9750
8010-00-721-9744	8010-00-721-9754
8010-00-721-9745	8010-00-835-7215
8010-00-965-2389	8010-00-965-2391
8010-00-079-2756	8010-00-290-6983
8010-00-141-2951	8010-00-290-6984
8010-00-584-3149	8010-00-582-5382
8010-00-584-3154	8010-00-584-3150
8010-00-721-9483	8010-00-721-9487
8010-00-883-5329	8010-00-721-9751
8010-00-965-2390	8010-00-721-9752
8010-00-965-2392	8010-00-515-2487

C.W. Fletcher,

Executive Director.

[FR Doc. 85-29003 Filed 12-5-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Software; Change in Date of Advisory Committee Meeting

SUMMARY: The meeting date for the Defense Science Board Task Force on Software scheduled for 6 January 1986 in the Pentagon, Arlington, Virginia as published in the **Federal Register** (Vol. 50, No. 222, Monday, 18 November 1985, FR Doc. 85-27344) has been changed to 22 January 1986. The meeting scheduled for 11 December 1985 as published in the same notice has been cancelled. In all other respects the original notice remains unchanged.

Patricia H. Means,

OSD Federal Register Liaison Office, Department of Defense.

November 29, 1985.

[FR Doc. 85-28960 Filed 12-5-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Intergovenmental Advisory Council on Education; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Planning Subcommittee of the Intergovernmental Advisory Council on Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: December 17, 1985.

ADDRESS: 2000 L Street, NW., Conference Room 577/579, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Jacqueline E. McGregor, Executive Director, Intergovernmental Advisory Council on Education, Department of Education, 300 7th Street, SW., Washington, DC 20202, (202) 472-6464.

SUPPLEMENTARY INFORMATION: The public is being given less than 15 days notice due to the need to reschedule this meeting. The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council is established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

The meeting of the planning subcommittee is open to the public. The meeting is scheduled from 11 a.m. to 2 p.m. on December 17.

The proposed agenda:

—Planning national networking conference Records are kept of all Council proceedings and are available for public inspection at the office of the Intergovernmental Advisory Council on Education 300 7th Street, SW., Room 513, Washington, DC. Signed at Washington, DC on Tuesday, December 2, 1985.

Jacqueline E. McGregor,

Executive Director, Intergovernmental Advisory Council on Education.

[FR Doc. 85-28967 Filed 12-5-85; 8:45 am]

BILLING CODE 4000-01-M

ENDANGERED SPECIES COMMITTEE

Hearing and Other Hearing-Related Matters

AGENCY: Endangered Species Committee, Interior.

ACTION: Notice of Hearing, Prehearing Conference, Opportunity to File Motions to Intervene, and Deadline for Filing Prehearing Motions; Information on Issues to be Addressed at the Hearing.

SUMMARY AND DATES: The Consolidated Grain and Barge Company of St. Louis, Missouri, has filed an application with the Secretary of the Interior seeking an exemption from section 7 of the Endangered Species Act for a barge fleeting area on the Ohio River near Mound City, Illinois.

A hearing will be held to develop the record from which the Secretary of the Interior, Chairman of the Endangered Species Committee, will prepare his report to the Committee under 16 U.S.C. 1536(g) (4), (5) and 50 CFR 452 04, 452.05. The hearing will take place in St. Louis,

Missouri beginning on January 28, 1986 at 10:00 A.M., in the West Court Room, Second Floor of the Old Court House, 11 North 4th Street. January 29 and 30 have also been set aside as additional hearing days, should they be necessary.

A prehearing conference among the parties and the Administrative Law Judge will be held at 10:30 A.M., January 8, 19867[[6 in the North Penthouse, Department of the Interior, 18th & C Streets, NW., Washington, DC. The prehearing conference will deal with the matters cited in 50 CFR 452.05(b). Any non-party wishing to become a party to this proceeding must file a motion to intervene by December 20, 1985. Refer to **SUPPLEMENTARY INFORMATION** below concerning the required contents of the motion. Under the Endangered Species Committee's regulations, the Consolidated Grain and Barge Company, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service are automatically parties to the proceeding.

Prehearing motions on matters other than intervention must be received by the Administrative Law Judge by January 7, 1986.

ADDRESS: Motions should be filed with Administrative Law Judge Frederick A. Miller, Room 1052C, Office of Hearings and Appeals, Department of the Interior, Federal Building, 600 Federal Place, Louisville, Kentucky 40202. One copy of all motions and other documents filed with the Administrative Law Judge must be sent to Ms. Barbara Abate, Room 6531, U.S. Department of the Interior, Washington, DC 20240. Any documents filed with the Administrative Law Judge must also be served on all parties. The parties' addresses are:

(1) Consolidated Grain and Barge Company, c/o Maxine I. Lipeles, Esq., 100 N. Broadway, Suite 1800, St. Louis, Missouri 63102; (2) the U.S. Army Corps of Engineers, c/o Stephen E. Smith, Esq., District Counsel, Office of Counsel, U.S. Army Engineer District, Louisville, P.O. Box 59, Louisville, Kentucky 40201-0059; and (3) the U.S. Fish and Wildlife Service, c/o W. Michael Young, Esq., Room 6547, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Copies of the exemption application and other documents filed with the Administrative Law Judge may be obtained from Ms. Barbara Abate, (202) 343-5216. Questions concerning the exemption process may be addressed to Mr. Jon H. Goldstein, (202) 343-7258.

SUPPLEMENTARY INFORMATION: (1) On October 28, 1985, the Secretary of the Interior received the Consolidated Grain and Barge Company's (Consolidated) application for an exemption from the requirements of section 7(a)(2) of the Endangered Species Act (Act), 16 U.S.C. 1531 *et seq.* The proposed agency action for which the exemption is sought is the issuance of a permit under Section 10 of the Rivers and Harbors Appropriation Act of 1899 by the U.S. Army Corps of Engineers for the establishment of a barge fleeting area on the Ohio River, right bank, near Mound City, Pulaski County, Illinois. The U.S. Army Corps of Engineers denied the permit because the U.S. Fish and Wildlife Service found that the proposed agency action would jeopardize the continued existence of *Plethobasis cooperianus* (orange-footed pearly mussel).

The Secretary of the Interior has determined that certain threshold criteria established by the Endangered Species Act, 16 U.S.C. 1533(g)(3); 50 CFR 452.03, have been met. The next step in the exemption process is the holding of a hearing to develop the record the Secretary of the Interior will use in preparing his report to the Endangered Species Committee under 16 U.S.C. 1536(g) (4), (5) and 50 CFR 452.04 and 452.05.

In order to grant an exemption the Endangered Species Committee must make positive findings on the following criteria:

(1) There are no reasonable and prudent alternatives to the agency action;

(2) The benefits of such action clearly outweigh the benefits of other courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(3) The action is of regional or national significance; and

(4) Neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources with respect to the agency action that has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures that would not violate section 7(a)(2) of the Endangered Species Act.

For purposes of the hearing and the Secretary's report, in which the Secretary will make findings concerning these criteria, Consolidated has the burden of proof. See 16 U.S.C. 1536(q)(5) and 50 CFR 452.04(a). The following questions illustrate the kind of specific information that will be sought for the record during the hearing.

1. One of the alternatives to the proposed project considered during consultation was having Consolidated rent fleeting facilities further away from its loading terminal. Is such rental space available and how costly is it? Would renting fleeting space elsewhere be so costly as to make it uneconomical to continue to operate the loading facility?

2. In its biological assessment the Corps of Engineers indicated that the left bank of the Ohio River between mile 964.5 and 967.2 is suitable for a fleeting area. If Consolidated were to lease or purchase this area for purposes of barge fleeting, how would the profitability of its loading facility be affected?

3. In the absence of Consolidated's facilities, what are the alternative transportation facilities, consistent with conserving the species or its critical habitat, which are available to Consolidated's suppliers? Do these alternative facilities have sufficient capacity to handle anticipated volumes?

4. Where are the suppliers of the commodities that Consolidated anticipates shipping located? Would Consolidated's customers incur higher transportation costs if they had to use alternative facilities to ship their commodities? How much would alternative transportation cost?

5. If Consolidated's customers had to use alternative shipping facilities, would society bear any costs over and above higher transportation costs, e.g., reduced production of commodities or increased environmental effects?

6. What is the nature and volume of the commodities that Consolidated anticipates shipping from its grain elevator and terminal facility at Mound City, Illinois?

7. Consolidated operates a barge facility on the left bank of the Ohio River between mile 974.66 and mile 975.31. Does Consolidated intend to continue operating this facility if its exemption application is granted? Are both facilities necessary for the loading facility at Mound City to be profitable?

8. In its exemption application Consolidated indicated that any further modification to its proposal consistent with Section 7(a)(2) of the Act would threaten the continued viability of its loading terminal. What evidence is there that modifications to Consolidated's proposed project that are consistent with conserving the species or its critical habitat are so costly, or the project so marginal, that any such modification would threaten the continued operation of the loading facility?

9. In its exemption application Consolidated states that its loading facility represents a major investment in the area and provides direct and indirect benefits in terms of employment, commerce, and the provision of goods and services.

Evidence regarding these contentions will be an important part of the record. For example, what is the nature of the regional economy? How much of the region's income, output, and employment is accounted for, both directly and indirectly, by Consolidated's grain elevator and terminal facility? Would the economic importance of Consolidated's facility be different in the absence of agricultural subsidies? Would there be a significant impact on the regional economy if Consolidated were to terminate its grain elevator and terminal facility? Is there any evidence that any unemployment that would result if Consolidated closed its facility would endure and that the unemployed would not be absorbed quickly by the regional economy? What would be the value of the output that would be lost by the nation if Consolidated were not granted an exemption for its barge fleeting project, and over what period would these losses be sustained?

10. Would there be any effects on the regional economy or the environment if Consolidated's fleeting operation were relocated to the site between mile 964.5 and 967.2 identified by the Corps or if Consolidated rented fleeting facilities?

11. In its exemption application Consolidated states that the majority of the commodities to be shipped is grain. There is evidence that in recent years, the strength of the dollar in international exchange markets has severely eroded the demand for agricultural commodities from the United States and, hence, for barging services. Is the depressed state of this demand likely to continue for the foreseeable future? If so, how will this affect the demand for Consolidated's shipping service? Is the reduced international demand for U.S. grain likely to result in excess capacity among barge fleeting companies and shippers that might service Consolidated's customers?

12. Does the proposed barge fleeting project and/or Consolidated's investment in barges depend on tax benefits for its economic feasibility? Are any of the barges intended for the proposed fleeting operation owned by entities other than Consolidated, and if so, what is the nature of Consolidated's relationship with these owners?

13. In response to the public notice announcing Consolidated's application for a permit, several commenters claimed that the proposed project would impair navigational safety due to the narrowness of the channel at the proposed site. The U.S. Army Corps of Engineers suggested that, in general, fleeting aids navigation by preventing breakaways and providing known, designated areas of barge activity. Moreover, in this case, the Corps stated that the project would not cause an obstruction but would tend to keep local traffic close to the right bank and over the mussel bed. Additional information on the navigational impacts of the project is requested.

14. There is a commercial mussel bed located near the proposed site for the barge fleeting facility. How would this commercial mussel fishing be affected by the facility?

15. Some of the key threats to *P. cooperianus* identified during consultation include turbidity and siltation, barge grounding, and water quality degradation due to barge cleaning, release of fuels, lubricants or other contaminants, and runoff from coal storage piles. How could these impacts be mitigated if an exemption is granted?

All parties should be prepared to discuss these issues at the prehearing conference and to address these issues, as appropriate, at the hearing.

(2) Under the Endangered Species Committee's regulations, the exemption applicant, the permitting agency (the U.S. Army Corps of Engineers in this case) and the U.S. Fish and Wildlife Service are automatic parties. Any other individual or group wishing to be a party should move to intervene in accordance with 50 CFR 452.06. A motion to intervene must state the movant's name and address, identify its representative, if any, set forth the interest of the movant in the proceeding, and show that the movant's participation would assist in the determination of the issues in question.

Frederick A. Miller,

Administrative Law Judge, Office of Hearings and Appeals, U.S. Department of the Interior.

[FR Doc. 85-29031 Filed 12-5-85; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; European Atomic Energy Community; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (ERATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-EU-854, to Kernforschungzentrum Karlsruhe GmbH, Karlsruhe, the Federal Republic of Germany, 2.5 micrograms of thorium-229, for use as a standard for urine analysis.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: December 3, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-29013 Filed 12-5-85; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Spain; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hearby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Spain concerning Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the supply of the following material:

Contract Number WC-SP-4, to the Junta de Energia Nuclear, Madrid, Spain, 0.21 micrograms of plutonium-239 and 0.00037 micrograms of plutonium-242, for use as standards for the measurement of environmental samples.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: December 3, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-29014 Filed 12-5-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 85-31-NG]

Development Associates, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Energy.

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 21, 1985, of an application filed by Development Associates, Inc. (Associates) a wholly-owned subsidiary of The Washington Water Power Company (Washington Water Power) for blanket authorization to import from Canada up to 20 Bcf of natural gas over a two-year period beginning on the date of first delivery. The gas would be supplied by various Canadian pipelines and producers and sold by Associates on behalf of, or for resale to, Washington Water Power, specific end-users, other natural gas distributors, or any other person engaged in the business of purchasing or selling natural gas. Associates proposes to file quarterly reports with the ERA giving the specific terms of each import and sale, including the price and volumes.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and Delegation Order No. 0204-111. Protests, motions to intervene or 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 January 6, 1986.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585 (202)252-9590

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585 (202) 252-6667.

SUPPLEMENTARY INFORMATION: Associates, a Spokane, Washington, corporation, is a wholly-owned subsidiary of Washington Water Power, a combination electric and gas utility that distributes natural gas at retail to restidential, commercial and industrial customers in eastern Washington and northern Idaho.

On November 21, 1985, Associates filed an application for blanket authorization to import up to 20 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. The gas which Associates would import may, if economic, be used by Washington Water Power for its system supply and sold together with its domestic supplies to existing and future commercial, residential and industrial customers in Washington and Idaho. Associates may also sell some of the gas on a short-term or spot basis to other end-users, natural gas distributors, or other persons engaged in the business of buying or selling natural gas.

Associates states that the gas will be obtained from individual producers, producer groups and associations and pipeline companies. The terms and conditions of each supply contract will be determined as a result of negotiations between Associates and the Canadian supplier. U.S. end-users are expected to include but not be limited to, industries, agriculture, hospitals, military bases, and institutions of higher learning. Associates expects that some end-users will use the imported Canadian gas instead of converting to an alternate fuel or ceasing operations entirely due to the higher cost of available domestic fuel supplies.

Associates asserts that the terms of each contract will maximize responsiveness to market factors and will be designed to be price competitive over the term. End-users with an ability to switch fuel will only use Associates' gas if it is competitively priced. Similarly, Washington Water Power and other distribution companies will not purchase gas that is not competitive with other sources of supply. Thus, if Associates cannot obtain competitively priced Canadian gas or adjust the sales price to meet the market price, no sales will be made and no gas will be imported under the requested authorization.

In support of its application, Associates states that no new pipeline facilities will be required to import the gas. It further asserts there would be a positive impact on the environment in instances where the imported gas is used to displace alternate fuels such as coal or high sulfur fuel oil.

Associates proposes to file with the ERA quarterly reports that would include the price for each import sale, volumes imported, duration of the sales agreement, contract adjustment and take provisions (if any) and a description of the U.S. market served.

This application is one of a number received by the ERA concerning the purchasing 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 its 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 will 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., January 6, 1986.

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 Associates' 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 29, 1985.

Robert L. Davies,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-28966 Filed 12-5-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-11; OFP Case No. 50300-9299-20-22]

Acceptance of Petition for Exemption and Availability of Certification by Boston Edison Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice.

SUMMARY: On October 24, 1985, Boston Edison Company (BEC), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new peakload powerplant at its existing Walpole substation (Walpole), from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the Federal Register at 46 FR 59872 (December 7, 1981).

BEC requested a permanent peakload exemption under 10 CFR 503.41 for a simple cycle combustion turbine generating facility with a maximum net electrical generation of 85 MW. Low sulfur No. 2 fuel oil will be the primary fuel, utilized at a maximum rate of 950 MM Btu/hr. The proposed existing Walpole substation, located at Walpole Station 146, South Street, Walpole, Massachusetts. The turbine will be capable of using commercial grade natural gas when available.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA herby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from BEC at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., 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 public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the Federal Register.

DATES: Written comments are due on or before Janaury 21, 1986. A request for public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-045, 1000 Independence Avenue SW., Washington, DC 20585.

Docket No. ERA-C&E-86-11 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington DC 20585. Telephone: (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room 6A-113, Washington, DC 20585. Telephone: (202) 252-6947.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. BEC has filed a petition for a permanent peakload powerplant exemption to use low sulfur No. 2 fuel oil as the primary fuel and natural gas when available in its proposed Walpole facility's simple cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant or any available alternative fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would

be exceeded. However, since ERA has determined that there are presently available alternative fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the BEC petition.

BEC submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine/generator facility will be operated solely as a peakload powerplant.

The proposed project is a contentional simple-cycle combustion turbine installation. Low sulfur No. 2 fuel oil will be the primary fuel, utilized at a maximum rate of 950 MM Btu/hr. Maximum net electrical generation in kilowatt hours will not exceed 85,000 kilowatts multiplied by 1,500 hours or 127,500,000 kilowatt hours during any 12 month period.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. BEC has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by BEC pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on BEC's petition that the grant or denial of the exemption will signficantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that BEC is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC, on November 22, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-28965 Filed 12-5-85; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order to Concord Petroleum Corp. and Paul C. Elliot

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Concord Petroleum Corporation and Paul C. Elliot.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of a Proposed Remedial Order which was issued to Concord Petroleum Corporation and Paul C. Elliot at 10810 Oak Creek, Houston, Texas 77024. This Proposed Remedial Order alleges that Concord Petroleum Corporation and Paul C. Elliot charged prices in excess of Concord's actual purchase price in violation of 10 CFR 212.186, 210.62(c) and 205.202 during the period June 1978 through December 1980 in the amount of $4,697,073.46.

A copy of the Proposed Remedial Order, with confidential information, if any, deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen Center, Suite 610, 500 Dallas Street, Houston, TX 77002.

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with 10 CFR 205.193.

Issued in Houston, Texas, on the 3rd day of October 1985.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 85-29016 Filed 12-5-85; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order to Phoenix Petroleum Co. and Steven B. Wyatt

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Phoenix Petroleum Company and Steven B. Wyatt.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of a Proposed Remedial Order which was issued to Phoenix Petroleum Company and Steven B. Wyatt (collectively referred to as Phoenix), 3315 Marquart, Suite 200, Houston, Texas 77027. This Proposed Remedial Order alleges that Phoenix charged prices in excess of its actual purchase prices in violation of 10 CFR 212.186, 210.62(c) and 205.202 during the period September 1979 through January 1981 in the amount of $41,557,058.52. In addition, the Proposed Remedial Order also alleges that Phoenix charged prices in excess of its permissible average markup in violation of 10 CFR 212.83 during the period September 1979 through August 1980 in the amount of $12,891,805.51

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with 10 CFR 205.193.

Issued in Houston, Texas, on the 17th day of September 1985.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 85-29017 Filed 12-5-85; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order to Southwestern Gulf Petroleum Co. and J. Buford Langston

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Southwestern Gulf Petroleum Company and J. Buford Langston.

SUMMARY: Pursuant to 10 CFR § 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of a Second Amended Proposed Remedial Order which was issued to Southwestern Gulf Petroleum Company and J. Buford Langston (Southwestern), formerly doing business at 13101 Northwest Freeway, Suite 320, Houston,

Texas 77040. This Second Amended Proposed Remedial Order alleges that Southwestern charged prices in excess of its actual purchase price in violation of 10 CFR § 212.186, 210.62(c) and 205.202 during the period April 1980 through December 1980 in the amount of $10,867,080.15. In addition, the Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR § 212.183 during the months of April, May, June and August of 1980 in the amount of $1,811,028.61.

A copy of the Proposed Remedial Order may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with 10 CFR § 205.193.

Issued in Washington, DC on the 21st day of November 1985.

Avrom Landesman,

Director, Office of Enforcement Programs.

[FR Doc. 85-29018 Filed 12-5-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TC85-17-001]

Williston Basin Interstate Pipeline Co.; Amendment to Tariff Filing

December 3, 1985.

Take notice that on November 12, 1985, Williston Basin Interstate Pipeline Company (Williston Basin), 304 East Rosser Avenue, Suite 200, Bismarck, North Dakota 58501, filed in Docket No. TC85-17-001 an amendment to its pending tariff filing, Docket No. TC85-17-000. The purpose of the instant amendment, according to Williston Basin, is to establish specific criteria to be followed by Williston Basin in order to provide a measure of protection for all existing customers in the event that reinstitution of growth limitations is warranted because of a sudden shortage of gas supply on Williston Basin's system.

Any person desiring to be heard or to make any protest with reference to said amended tariff filing should on or before December 10, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedue (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28943 Filed 12-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2969-003 et al.]

Hydroelectric Applications (Borough of Weatherly et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: P-2969-003.

c. Date Filed: August 14, 1985.

d. Applicant: Borough of Weatherly.

e. Name of Project: Francis E. Walter.

f. Location: At the U.S. Army Corps of Engineers' Francis E. Walter Dam and Reservoir on the Lehigh River in Lucerne and Carbon Counties, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. James P. Palumbo, Utility Engineers, Incorporated, 1460 Wyoming Avenue, Forty Fort, PA. 18704.

i. Comment Date: January 21, 1986.

j. Description of Project: The proposed run-of-river project would utilize the U.S. Army Corps of Engineers' Francis E. Walter Dam and Reservoir as proposed to be modified and authorized by Congress and would consist of: (1) New trashracks and the existing intake structure; (2) a new 10-foot-diameter and 500-foot-long steel penstock; (3) a new powerhouse with turbine-generator units with a total installed capacity of 10,310 kW; (4) a new 67-foot-wide and 250-foot-long tailrace; (5) a new 7.5-mile-long transmission line; and (6) other appurtenances. Applicant estimates an average annual generation of 56,700,000 kWh.

k. Purpose of Project: Project energy would be sold to the Pennsylvania Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $20,000.

2 a. Type of Application: Minor License.

b. Project No.: 7391-001.

c. Date Filed: May 17, 1985.

d. Applicant: Power House Systems.

e. Name of Project: Upper Israel River Dam.

f. Location: Israel River in Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. William Allin, Power House Systems, Water Street, Lancaster, NH 03584.

i. Comment Date: January 21, 1986.

j. Description of Project: The proposed project would consist of: (1) A reconstructed 15-foot-high, 222-foot-long concrete capped gabion weir; (2) a reservoir with a water surface area of 3.25 acres, a gross storage capacity of 20 acre-feet, and a water surface elevation of 914.5 feet m.s.l.; (3) an existing 12-foot-deep, 18-foot-wide, and 390-foot-long power canal; (4) two new powerhouses located, (a) at the dam containing one generating unit with an installed capacity of 21 kW, and (b) 390 feet downstream from the dam containing two generating units with an installed capacity of 250 kW each for a total installed capacity of 521 kW; (5) an existing 780-foot-long tailrace; (6) a new transmission line, 300 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual generation would be 1,925,000 kWh. The existing dam is owned by the Public Service Company of New Hampshire.

k. Purpose of Project: Project power would be sold to the Public Service Company of New Hampshire.

1. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

3 a. Type of Application: License (under 5 MW).

b. Project No.: 9072-000.

c. Date Filed: April 1, 1985.
d. Applicant: Northwest Power Company, Inc.
e. Name of Project: East Fork Creek.
f. Location: On East Fork Creek in Nevada County, California within Tahoe National Forest.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. J. Ward MacDonald, Northwest Power Company, Inc., Four Embercadero Center, Suite 1980, San Francisco, CA 94111.
i. Comment Date: January 21, 1986.
j. Description of Project: The proposed project would consist of: a 6-foot-high, 70-foot-long diversion dam, located 800 feet downstream of the junction of Weaver Creek and East Fork Creek; (2) a 48-inch-diameter, 5,620-foot-long conduit; (3) a 36-inch-diameter, 5,550-foot-long penstock; (4) a powerhouse containing a single 4,950-kW generating unit, operating under a head of 925 feet; and (5) 4.2-mile-long, 60-kV transmission line, connecting with Pacific Gas and Electric Company (PG&E) system via Nevada Irrigation District's proposed Bowman-Spaulding transmission line. No recreational facilities are proposed. The estimated 9.2 million kWh generated annually would be sold to PG&E.
k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.
4 a. Type of Application: Preliminary Permit.
b. Project No.: 9345–000
c. Date Filed: July 15, 1985.
d. Applicant: Sumner Hydro, Incorporated.
e. Name of Project: Caballo Dam Water Power Project.
f. Location: On Rio Grande River, near town of Truth, in Sierra County, New Mexico.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Ms. Randi McGinn, 1600 Princeton SE, Albuquerque, NM 87106.
i. Comment Date: January 21, 1986.
j. Description of Project: The proposed project, to be located at the existing outlet of the Bureau of Reclamation's (BOR) Caballo Dam, would consist of: (1) Two 7-foot-diameter, 600-foot-long penstocks; (2) one 5-foot-diameter, 600-foot-long penstock; (3) a powerhouse with a total installed capacity of 3,714 kW operating under a head of 40 feet; and (4) a 1.6-mile-long, 155-kV transmission line to connect to an existing Plains Electrical Co-operative Company transmission line. The Applicant estimates the average annual energy generation at 15.11 GWh.
k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.
5 a. Type of Application: Preliminary Permit.
b. Project No.: 9371–000.
c. Date Filed: August 1, 1985.
d. Applicant: Browns Valley Associates.
e. Name of Project: Daguerre Point Dam Hydroelectric Project.
f. Location: At the U.S. Army Corps of Engineers' Daguerre Point Dam on Yuba River in Yuba County, California.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, #600, Washington, DC 20005.
i. Comment Date: January 21, 1986.
j. Description of Project: The proposed project would consist of: (1) a 8-foot-diameter, 450-foot-long penstock; (2) a powerhouse containing one generating unit with a rated capacity of 3,600 kW operating under a head of 35 feet; and (3) a 12.5-kV, 600-foot-long transmission line connecting the project with an existing Pacific Gas & Electric Company (PG&E) line northeast of the powerhouse.
k. Purpose of Project: The estimated average annual generation of 16.3 million kWh would be sold to PG&E.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
6 a. Type of Application: Preliminary Permit.
b. Project No.: 9382–000.
c. Date Filed: August 1, 1985.
d. Applicant: St. George Hydro Associates.
e. Name of Project: Virgin River Hydroelectric Project.
f. Location: On Virgin River, near town of St. George, in Washington County, Utah.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Louis Rosenman, St. George Hydro Associates, 1350 New York Avenue, #600, Washington, D.C. 20005.
i. Comment Date: January 27, 1986.
j. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 250-foot-long diversion dam at elevation 3,570 feet; (2) a 20-foot-wide, 10-foot-deep, 36,000-foot-long canal; (3) a 6-foot-diameter, 1,000-foot-long penstock; (4) a powerhouse containing one generating unit with a rated capacity of 2,700 kW operating under a head of 750 feet; and (5) a 100-foot-long, 12.5-kV transmission line to connect to an existing Washington Company Water Conservancy District's transmission line. The Applicant estimates the average annual energy generation at 18.3 GWh.
k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
7 a. Type of Application: Preliminar Permit.
b. Project No.: 9422–000.
c. Date Filed: August 30, 1985.
d. Applicant: Adirondack Hydro Development Corporation.
e. Name of Project: Ogdensburg Project.
f. Location: On the Oswegatchie River, in Ogdensburg, New York.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Malcolm M. Preston, Adirondack Hydro Development Corporation, Market Street, Potsdam Industrial Plaza, Potsdam, NY 13676.
i. Comment Date: January 21, 1986.
j. Description of Project: The proposed project would consist of (1) an existing 19-foot-high and 350-foot-long concrete gravity dam, including a sluice gate structure and intake structure, with a crest elevation of 258 feet mean sea level; (2) an existing 290-acre impoundment with total storage capacity of 1450 acre-feet and surface elevation of 258 feet mean sea level; (3) a proposed integrated powerhouse and intake approximately 60 feet wide, 100 feet long, and containing two turbine/generators with a rated capacity of 1500 kW each. Flow will discharge to the Oswegatchie River via a proposed tailrace excavated in bedrock; (4) a proposed flood control structure of reinforced concrete, approximately 64 feet long, 35 feet wide, and containing three flood gates and one ice sluice gate, all of fabricated steel; (5) a proposed 40-foot by 60-foot reinforced concrete equipment and control building; (6) a proposed 13.2 kV underground transmission line 130 feet in length; and (7) appurtenant facilities.
The estimated annual energy production of the project is approximately 14,000,000 kWh. The estimated net hydraulic head is 11.5 feet. Project power would be sold to Niagara Mohawk Power Corporation. The dam is owned by the City of Ogdensburg, New York.
k. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant

would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estiamtes that the cost of the work to be performed under the preliminary permit would be $110,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: P-9423-000.

c. Date Filed: September 3, 1985.

d. Applicant: Summit Energy Storage, Inc.

e. Name of Project: Summit Energy Storage

f. Location: On the Hudson Run, in Summit and Medina Counties, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David C. Willett, Liberty Building, Suite 1000, 424 Main Street, Buffalo, NY 14202–3592.

i. Comment Date: January 17, 1986.

j. Description of Project: The proposed project would consist of: 1. An existing limestone mine, known as the Norton Mine, forming a lower reservoir of approximately 8000 acre-feet capacity at an elevation of 1100 to 1200 feet below mean sea level; 2. a proposed upper reservoir of maximum elevation 1100 feet above mean sea level and 300 acres in area, impounded by a series of new earth or rockfill dams, approximately 8000 feet in length and approximately 75 feet (maximum) in height; 3. a proposed powerhouse to be located in caverns excavated below the existing mine workings, and containing six 250 MW reversible pump turbine/motor generators; 4. proposed concrete and steel-lined tunnels and shafts, of maximum 28-foot diameter, which will convey flows between upper and lower reservoirs, provide access to subsurface installations, and act as vents; 5. proposed switchyard, control building, maintenance building, and hoist works, all to be located at the surface; 6. a proposed 345 kV transmission line approximately 3 miles in length; and 7. appurtenant facilities. The proposed project will operate only as a pumped-storage facility, with a storage capacity of approximately 15,000 megawatt-hours based on an installed 1,500 MW capacity operating in 10 hour cycles. The net hydraulic head is about 2200 feet. Project power would be sold to utilities of the Central Area Power Coordination Group.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $900,000.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9466–000.

c. Date Filed: September 17, 1985.

d. Applicant: Gaiawatt Associates.

e. Name of Project: Upper Whitewater Project.

f. Location: On the Millers River near the Town of Athol, Worchester County, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825 (r).

h. Contact Person: Robert E. King, Gaiawatt Associates, 170 Barretts Mill Rd., Concord, MA 01742.

i. Comment Date: January 21, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 210-foot-long, 13-foot-high concrete gravity dam; (2) a reservior having a surface area of 3 acres, a storage capacity of 42 acre-feet, and a normal water surface elevation of 575 feet msl; (3) an existing 350-foot-long power canal approximately 5 feet deep and 15 feet wide; (4) an existing powerhouse containing two generating units, (one of which may be located at the dam), having a total installed capacity of 375 kW; (5) an exising 250-foot-long tailrace approximately 15 feet wide and 4 feet deep; (6) a new 300-foot-long, 12-kV transmission line; and (7) appurtenant facilities. The existing dam and project facilities are owned by UTD Corporation/Union Butterfield Division of Litton Industries. The Applicant estimates the average annual generation would be 2,450,000 kWh.

k. Purpose of Project: All project energy would be sold to the Massachusetts Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $25,000.

10 a. Type of Application: Preliminary Permit.

b. Project No.: P-9507-000.

c. Date Filed: October 1, 1985.

d. Applicant: Long Lake Energy Corporation.

e. Name of Project: Green Island.

f. Location: On the Hudson River in Troy County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825 (r).

h. Contact Person: Mr. Paul J. Elston, 420 Lexington Avenue, Suite 440, New York, NY 10170.

i. Comment Date: January 21, 1986.

j. Description of Project: The Applicant proposes to develop the presently unutilized capacity at the Troy Lock and Dam, owned by the U.S. Army Corps of Engineers and licensed to the Niagara Mohawk Power Corporation for the existing Green Island Project No. 13. The proposed project would consist of: (1) A proposed gated intake structure to control flow to the powerhouse; (2) a proposed 250-foot-wide and 220-foot-long forebay to be located adjacent to the west lock wall; (3) a proposed powerhouse to contain three to six turbine/generators for an installed capacity of 20,000 kW; (4) a proposed tailrace; (5) a proposed switchyard; (6) new transmission lines; and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 50 million kolowatt-hours under an hydraulic head of 13.5 feet.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

m. *Proposed Scope and Cost of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $160,000.

11 a. Type of Application: New License (Minor).

b. Project No.: 308-001.

c. Date Filed: February 19, 1985.

d. Applicant: Pacific Power and Light Company.

e. Name of Project: Wallowa Falls.

f. Location: On the East Fork Wallowa River and Royal Purple Creek in Wallowa County, Oregon near the town of Joseph, within the Wallowa Whitman National Forests.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825 (r).

h. Contact Person: Mr. Lee D. Weislogel, Vice President, 920 S.W. Sixth Avenue, Portland, OR 97204.

Mr. Lee Sherline, Leighton and Sherline, Suite 101, 1010 Massachusetts Avenue NW., Washington, DC 20001

Hugh Smith, Esquire, Stoel, Rives, Boley, Fraser & Wyse, 900 S.W. Fifth Avenue, Portland, OR 97204-1268.

i. Comment Date: February 3, 1986.

j. Description of Project: The construction project consists of: (1) A 2-foot-high, 7-foot-long concrete diversion dam at elevation 5,838 feet on Royal Purple Creek having a 1-foot-wide spillway; (2) an 8-inch-diameter, 240-foot-long woodstave and pvc pipeline discharging flows into the Wallowa Falls forebay, 200 feet upstream of the dam; (3) an 18-foot-high, 125-foot-long rockfilled log crib dam at elevation 5,795 feet having a 24-foot-wide spillway creating; (4) a 2-acre forebay; (5) a 5,688-foot-long steel penstock varying in diameter from 18-inches to 16-inches; (6) a powerhouse containing a single generating unit with a rated capacity of 1,100 kW operating under a head of 1,168 feet producing an average annual energy output of 7 million kWh; (7) a tailrace discharging project flows into the West Fork Wallowa River; and (8) a 20-foot-long, 7.2-kV transmission line which connects to Pacific's Wallowa Falls Substation.

k. Purpose of Project: Project power will continue to be used to assist Pacific Power and Light Company in meeting its customer's electric loads.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

12 a. Type of Application: Transfer of License.

b. Project No.: P-3410-002.

c. Date Filed: October 17, 1985.

d. Applicants: Woods Lake Association and Woods Lake Hydro Co.

e. Name of Project: Woods Lake.

f. Location: On lime Creek, a tributary to Frying Pan Creek, in Eagle County, Colorado.

g. Filed Pursuant to: Federal Power Act, Part 1, Section 8.

h. Contact Person:

Mr. Russell Scott, Jr., P.O. Box 4257, Aspen, Colorado 81611

Kenneth M. Knight, Esq., Knight and Lesher, P.C., 3201 East 2nd Avenue, Suite 300, Denver, Colorado 80206, (303) 321-2929.

i. Comment Date: January 13, 1986.

j. Description of Project: Woods Lake Association (Licensee) was issued a license for the Woods Lake Project on February 1, 1983. Licensee proposes to transfer the license to Woods Lake Hydro Co. The project is located in Sections 23 and 24, Township 7 South, Range 83 West, of the Sixth Principal Meridian. The project is existing and consists of a concrete diversion structure structure, a small reservoir, a pipeline/penstock, a powerhouse containing a 30-kW turbine-generator unit, and a 1.02-mile-long transmission line. Project power is utilized by the Woods Lake Area Owners Association. The project is located within the White River National Forest.

k. This notice also consists of the following standard paragraphs: B, C and D2.

13 a. Type of Application: Major License.

b. Project No.: P-4738-002.

c. Date Filed: October 26, 1984.

d. Applicant: McGrew, McMaster & Koch.

e. Name of Project: Glacier Creek.

f. Location: On Glacier Creek, tributary to the Nooksack River, in Whatcom County, Washington, and affecting U.S. lands within the Mt. Baker National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Neil H. Macdonald McGrew, McMaster & Koch, P.O. Box 31359, Seattle, WA 98103.

i. Comment Date: January 31, 1986.

j. Description of Project: The proposed run-of-river project would consist of: (1) A 10-foot-high 60-foot-long reinforced-concrete diversion structure; (2) a 10,350-foot-long, 48-inch-diameter steel penstock; (3) a powerhouse containing a generating unit rated at 5,000-kW operated at a head of 530 feet and at a flow of 130 cfs; (4) a 100-foot-long tailrace; (5) a 2.7-mile-long, 13.8-kV underground transmission line; (6) a 13.8/55-kV switchyard; and (7) a 400-foot-long access road to the powerhouse and a 1,500-foot-long access road to the diversion structure.

The applicaton was filed during the term of Applicant's preliminary permit. Applicant estimates that the average annual energy generation would be 22 million kWh and that the 1985 total project cost would be $7,500,000.

k. Purpose of Project: The purpose of the project is to generate electrical power which will be placed on the power grid.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

14 a. Type of Application: Major License (over 5 MW)—Existing Dam.

b. Project No.: 6902-003.

c. Date Filed: October 8, 1985.

d. Applicant: City of New Martinsville.

e. Name of Project: Willow Island Lock/Dam.

f. Location: Ohio River in Pleasant County, West Virginia and Washington County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C 791(a)-825(r).

h. Contact Person: Mr. Michael Francis, City Attorney, City of New Martinsville, Brennan & Francis, P.O. Drawer 68, New Martinsville, WV 26155.

i. Comment Date: January 31, 1986.

j. Description of Project: The proposed project would utilize the head created by the existing Corps of Engineers' Willow Island Locks and Dam, and would consist of: (1) A proposed 980-foot-long approach channel with varying widths from 122 feet to 320 feet; (2) a proposed powerhouse containing a generating unit with a rated capacity of 35 MW; (3) a proposed 865-foot-long exit channel with varying widths from 114 feet to 190 feet; and (4) a proposed 1.6 mile-long transmission line tying into the existing Monongahela Power Company System. The Applicant estimates an average annual energy production of 181 GWh.

k. Purpose of Project: Power would be sold to Monongahela Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

15 a. Type of Application: Exemption.

b. Project No: 9169-000.

c. Date Filed: May 6, 1985.

d. Applicant: Boston Power Company.

e. Name of Project: Thompson's Mills.

f. Location: At Thompson's Mills millrace in Linn County, Oregon.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Mert Hunking, Hydro-Watt Systems, 1150 N.W. 5th Place, Canby, OR 97013.

i. Comment Date: January 13, 1986.

j. Description of Project: The proposed project would consist of converting one of the three existing turbines from mechanical power to electrical power generation. The capacity of the

generator would be 100 kW with an average annual generation of 600,000 kWh.

Purpose of Exemption—An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop project.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

16 a. Type of Application: Preliminary Permit.

b. Project No: 9377–000.

c. Date Filed: August 1, 1985.

d. Applicants: City of Tacoma Department of Public Utilities and Public Utility District No. 1 of Jefferson County, Washington.

e. Name of Project: Big Quilcene.

f. Location: On the Big Quilcene River in Jefferson County, Washington near the town of Quilcene partially within the Olympic National Forest.

g. Filed Pursuants: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Paul J. Nolan, Director, City of Tacoma, Department of Public Utilities, P.O. Box 11007, Tacoma, Washington 98411, J.R. Kint, Manager, Public Utility District No. 1 of Jefferson County, Washington, Jefferson County Courthouse, P.O. Box 1331, Port Townsend, Washington 98368.

i. Comment Date: January 31, 1986.

j. Description of Project: The proposed project would consist of: (1) A 15-foot-high, 50-foot-long rock and timber dam at elevation 1,305 feet; (2) an intake structure located at the existing dam; (3) a 23,760-foot-long pipeline; (4) a surge tank; (5) a 6-foot-diameter, 2,400-foot-long penstock; (6) a powerhouse containing a single generating unit with a capacity of 10,000 kW and producing an estimated average annual energy output of 50 million kWh; (7) a tailrace; and (8) a 1.5-mile-long transmission line tying into the exisling 12-kV system of Pudget Sound Power and Light Company.

A preliminary permit, if issued does not authorize construction. The Applicant seeks a 36 month permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost for conducting these studies is $200,000.

k. Purpose of Project: Project power would be used by the City of Tacoma.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

17 a. Type of Application: Preliminary Permit.

b. Project No: 9405–000.

c. Date Filed: August 16, 1985.

d. Applicant: Millstream Hydro.

e. Name of Project: Huckins Mill Dam.

f. Location: On the Suncook River in Merrimack County, New Hampshire.

g. Filed Pursuant: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John R. Lavigne, Jr., Millstram Hydro, Box 287, Bradford, NH 03221.

i. Comment Date: January 31, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 10.5-foot-high, 146-foot-long concrete gravity dam; (2) a reservoir with a surface area of 30 acres, a storage capacity of 200 acre-feet, and a normal water surface elevation of 330 feet m.s.l.; (3) an existing concrete intake structure; (4) a new 8-foot-diameter, 200-foot-long steel penstock; (5) a new concrete powerhouse containing one generating unit with a capacity of 500 kW; (6) a new 10-foot-deep, 20-foot-long earth tailrace; (7) an existing transmission line, 600 feet long; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 1,700,000 kWh. The existing dam is owned by Mr. George R. Wiggin, Epson, New Hampshire.

k. Purpose of Project: Project power would be sold to Concord Electric or the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estiamtes that the cost of the studies under permit would be $12,000.

18. a. Type of Application: Preliminary Permit.

b. Project No.: 9432–000.

c. Date Filed: September 4, 1985.

d. Applicant: The Town of Easthampton, Massachusetts.

e. Name of Project: Manhan River Dam.

f. Location: Manhan River in Hampshire County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Steven D. Johnson, Hampshire County Planning Department, 99 Main Street-Courthouse, Northampton, MA 01060.

i. Comment Date: January 13, 1986.

j. Competing Application: Project No. 9139; Date Filed: April 29, 1985.

k. Description of Project: The proposed project would consist of: (1) An existing 6-foot-high, 95-foot-long concrete gravity dam; (2) a reservoir with a surface area of 9 acres, a storage capacity of 324 acre-feet, and a normal water surface elevation of 126.5 feet USGS; (3) an existing concrete intake structure; (4) an existing 28-foot-long concrete flume; (5) a new powerhouse containing two generating units with a capacity of 71 kW each for a total installed capacity of 142 kW; (6) a new transmission line, 200 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 700,000 kWh. The existing dam is owned by the Town of Easthampton, Massachusetts.

l. Purpose of Project: Project power would be sold to the Western Massachusetts Electric Company.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

19. a. Type of Application: Preliminary Permit.

b. Project No.: 9525–000.

c. Date Filed: October 4, 1985.

d. Applicant: Tuolumne Regional Water District, County of Tuolumne, and Tuolumne County Water District No. 1.

e. Name of Project: Mill Creek.

f. Location: On Mill and Cascade Creeks, tributaries of the Middle Fork Stanislaus River, near Strawberry, in Tuolumne County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Gary N. Egger, Tuolumne Regional Water District, P.O.

Box 3728, Sonora, CA 95370, (209) 532-5536.

i. Comment Date: January 13, 1986.

j. Competing Application: Project Nos. 9046-000 and 9048-000; Date Filed: March 25, 1985.

k. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 12-foot-wide, 20-foot-long diversion structure across Cascade Creek at elevation 6,030 feet msl; (2) a 30-inch-diameter, 3,000-foot-long pipeline transporting water from Cascade Creek and discharging to Mill Creek at elevation 5,820 feet msl; (3) a 50-foot-high, 100-foot-wide, 150-foot-long regulating and diversion structure across Mill Creek at elevation 5,360 feet msl, creating a 400 acre-foot reservoir with a surface area of 7.5 acres and a normal maximum surface elevation of 5,520 feet msl; (4) a 30-inch-diameter, 4,300-foot-long pipeline; (5) a 30-inch-diameter, 1,300-foot-long penstock; (6) a powerhouse located adjacent to Mill Creek at elevation 4,090 feet msl, containing a single Pelton turbine-generator unit with a rated capacity of 3.7 MW and producing an estimated average annual generation of 16.2 GWh; (7) a tailrace; and (8) a 7-mile-long, 17-kV transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) line at Cow Creek and Highway 108. Applicant intends to sell project power to PG&E. The project would occupy Stanislaus National Forest lands.

A preliminary permit, if issued, does not authorize constructiton. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $250,000.

l. This notice also consists of the following standard paragraphs: A8, B, C and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "Comments", "Notice of Intent To File Competing Application", "Competing Application", "Protest" or "Motion to Intervene", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical

and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 8–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: December 3, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–28944 Filed 12–5–85; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC).

Date and time: January 9, 1986—9:00 a.m.–5:00 p.m. January 10, 1986—8:30 a.m.–Noon.

Place: Health Research Laboratory Auditorium, Los Alamos National Laboratory, Los Alamos, New Mexico.

Contact: David A. Smith, Department of Energy, Office of Health and Environmental Research (ER–72), Office of Energy Research, Washington DC 20545, Telephone: 301/353–2987.

Purpose of the committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implemntation of the Health and Environmental Research (HER) program.

Tentative agenda: Briefings and discussions of:

Thursday, January 9, 1986

- Presentations by Los Alamos National Laboratory Staff.
- Public comment (10 minute rule).

Friday, January 10, 1986

- Report from HERAC Subcommittee on Ecology.
- Report from HERAC Subcommittee on Radiation Biology.
- HERAC Subcommittee on Biotechnology Discussion.
- New Business Discussion.
- Public comment (10 minute rule).

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact David A. Smith at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on December 3, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85–29015 Filed 12–5–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of November 4 Through November 8, 1985

During the week of November 4 through November 8, 1985, the decisions and orders summarized below were issued with respect to applications for 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.

Remedial Orders

Liberty Trading Company, Ray Levrier, 11/6/85; HRO–0181

Liberty Trading Co. and Ray Levrier (collectively referred to as Liberty) objected to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on April 29, 1983. In the Proposed Remedial Order, the ERA focused on two groups of crude oil resale transactions. First, ERA found that during the period July through November 1980 Liberty received illegal revenues totalling $1,135,024.19 by reselling crude oil at prices in excess of those permitted by 10 CFR 212.186 (the layering regulation) and 210.62 (the normal business practices rule). Second, ERA found that in certain other transactions

during the audit period, Liberty violated 10 CFR 212.182 and 212.183 by charging prices in excess of the firm's permissible average markup of $0.20 per barrel. This violation amount equals $191,088.73. In concluding that the Proposed Remedial Order should be issued as a final Order, the DOE found that, in the first group of transactions, Liberty failed to show that it performed any valuable economic function in its transactions which would justify a markup. With respect to the second group of transactions, the DOE determined that Liberty's average markup exceeded its permissible average markup in September and October 1980. The important issues discussed in the Decision and Order include: (i) The substantive and procedural validity of the layering regulation; (ii) the agency's interpretation of the layering regulation; and (iii) the personal liability of Ray Levrier.

Mountain Fuel Supply Company/Economic Regulatory Administration, 11/8/85; HRO-0085; KRZ-0005; KRZ-0006

Mountain Fuel Supply Co. objected to a Proposed Remedial Order which the ERA issued to the firm on July 15, 1982. In the PRO, the ERA found that the firm sold volumes of crude oil at prices that exceeded the applicable ceiling prices established pursuant to 10 CFR Part 212, Subpart D. After considering the firm's Statement of Objections, the DOE concluded that the PRO should be issued as a final Order. In reaching this conclusion, the DOE rejected the firm's contention that a posted price could be established by reference to the sales price for crude oil specified in a series of individual contracts between specific producers and purchasers of the crude oil. In addition, the DOE determined that as the operator and 50 percent working interest owner of the properties in question, Mountain Fuel was liable for the overcharges attributable to oil taken in kind by royalty and working interest owners. This Decision and Order also granted ERA's motion to join as a party to this proceeding Wexpro Co., the firm that succeeded Mountain Fuel as the operator and 50 percent interest owner of one of the properties in question. Finally, the DOE granted ERA's motion to modify the remedial provisions of the PRO to require Mountain Fuel to pay interest on the amount of the overcharges up to the time the firm remits payment of the overcharges to the DOE.

Petition for Special Redress

Air Transport Association of America, 11/4/85; HEG-0035

The trade association of domestic scheduled airlines—the Air Transport Association of America—requested that the DOE retrieve funds obtained as a result of consent orders which it deposited directly into the United States Treasury and institute special refund proceedings to attempt to distribute those funds to injured parties. In dismissing the Petition, the Office of Hearings and Appeals held that the ATA, as a third party to the consent orders involved, lacked standing to challenge the remedies in them through a Petition for Special Redress relief under 10 CFR Part 205, Subpart R.

Interlocutory Order

Economic Regulatory Administration, 11/5/85; KRZ-0001; KRZ-0002; KRZ-0003; KRZ-0004

The economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed the following four motions and requests pertaining to an evidentiary hearing which will be conducted in connection with an enforcement proceeding initiated against Consolidated Materials, Inc.: (i) A Motion for Leave to File, (ii) a Motion for Reconsideration of a denial of an earlier Motion for Leave to File, (iii) a Request to Present Testimony in accordance with the terms of a Decision and Order issued on October 16, 1985, *Consolidated Materials, Inc.*, 13 DOE ¶ 83,041 (1985), and (iv) a Request for the Issuance of Subpoenas. In considering the motions and requests described above, the OHA determined that the Motion for Leave to File should be dismissed, that the Motion for Reconsideration should be denied, that the Request to Present Testimony should be granted, and that the Request for Issuance of Subpoenas should be granted.

Supplemental Order

Clork Oil & Refining Corporation/Apex Oil Company, 11/5/85; KRX-0002; KRX-0003

Clark Oil & Refining Corporation and Apex Oil Company (collectively "Clark") filed a petition for review of two Special Report Orders (SROs) that were issued to Clark by the Office of Hearings and Appeals on October 10, 1985. *Clark Oil & Refining Corp.*, 13 DOE ¶ 83,038 (1985); *Clark Oil & Refining Corp.*, 13 DOE ¶ 83,037 (1985). In its petition for review, Clark argued that the SROs should be rescinded since they were procedurally invalid and imposed an improper self-audit burden upon Clark. In considering Clark's petition, the DOE determined that the issuance of the SROs was procedurally correct and that Clark had failed to substantiate its claim that the report requirements of the SROs are unduly burdensome. Accordingly, Clark's petition for review was denied.

Refund Applications

Bayou State Oil Company, Ida Gasoline, Inc./Freeman Oil Company et al., 11/5/85; RF117-11 et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed by retailers and resellers of Bayou State Oil Company covered petroleum products. The claimants applied for refunds based on the procedures outlined in *Bayou State Oil Company*, 12 DOE ¶ 85,161 (1985). All of the applicants were large resellers of Bayou State products who demonstrated that, on a volumetric basis, they were eligible for refunds exceeding $5,000. All, however, elected to limit their claims to the $5,000 threshold amount, and therefore did not have to demonstrate injury in this proceeding. The applicants established that the fuel oil they purchased originated with Bayou State. After examining the applications and supporting documentation, the DOE concluded that the applicants should receive refunds at the threshold amount. The refunds granted in this decision total $36,020, including interest.

Gulf Oil Corporation/Bill's Gulf et al., 11/5/85; RF40-1806 et al.

The DOE issued a Decision and Order concerning 43 Applications for Refund filed by purchasers of Gulf Oil Corporation petroleum products. The claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. All of the claimants demonstrated that they would not have been required to reduce selling prices to their customers by the amount of refund received, and they had purchased products directly from Gulf. Therefore, the DOE concluded that the claimants should receive a total of $50,735, consisting of $43,897 in principal and $6,838 in accrued interest.

Gulf Oil Corporation/Commander Oil Corp. et al., 11/7/85; RF40-1469 et al.

The DOE issued a Decision and Order approving a total refund of $155,952.37 in principal and $24,287.67 in accrued interest for Commander Oil Corporation and eleven other applicants who were direct purchasers of Gulf Oil Corporation petroleum products. The approval was made pursuant to the special refund procedures set forth in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984).

Gulf Oil Corporation/J.C. Roberts Oil Co. et al., 11/7/85; RF40-462 et al.

The DOE issued a Decision and Order approving a total refund of $72,152.73 in principal and $11,236.90 in interest for J.C. Roberts Oil Co. and 16 other applicants who were direct purchasers of Gulf Oil Corporation petroleum products. The approval was made in accordance with the special refund procedures set forth in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984).

Gulf Oil Corporation/Silver Springs Gulf et al., 11/8/85; RF40-1796 et al.

The DOE issued a Decision and Order granting refunds form the Gulf Oil Corporation deposit escrow fund to 14 purchasers of Gulf refined petroleum products. The refunds to these firms total $16,166, consisting of $14,088 in principal and $2,078 in interest. All of the refund applicants are retailers who demonstrated that they would not have been required to reduce selling prices to their customers by the amount of refund they receive. Gulf may be required to pay additional interest; if it does so, each applicant will receive an additional, pro rata, refund.

Gulf Oil Corporation/Vander Pluym Oil Company et al., 11/5/85; RF40-00114 et al.

The DOE issued a Decision and Order concerning 25 Applications for Refund filed by resellers and retailers of Gulf refined products, in accordance with the refund procedures established in *Gulf Oil Corp.*, 12 OE ¶ 85,048 (1984). In considering the Applications, the DOE found that each of the applicants had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. Accordingly, the firms were

granted refunds totalling $92,641 ($80,157 principal plus $12,484 interest).

Hendel's, Inc./Woodlawn Filling Station et al., 11/5/85; RF79-04 et al.

The Office of Hearings and Appeals granted Applications for Refunds filed by three claimants from a fund obtained by the Department of Energy through a consent order which it entered into with Hendel's, Inc. All of the applicants were retailers who requested refunds at or below the $5,000 threshold level. The total amount of refunds granted was $17,045, consisting of $10,063 in principal and $6,982 in interest.

Husky Oil Company/Home Oil and Tire Company et al., 11/5/85; RF161-72 et al.

The DOE issued a Decision and Order concerning three Applications for Refund filed by Home Oil and Tire Company and two other firms. Each of the applicants had received refunds in a prior Decision and Order, *Husky Oil Company/Mapleton Sales, Inc. et al.*, 13 DOE ¶ ——, Case No. RF161-72 (October 24, 1985). The refunds granted to these applicants were too low because they were based on understated volumes of qualifying purchases from Husky. Each applicant was therefore granted an additional refund equal to the additional number of gallons purchased from Husky, multiplied by the applicable total volumetric amount of $.000628. The total amount of additional refunds granted in this Decision and Order was $2,243.

Montana Power Company/Farmers Union Central Exchange, Inc., 11/8/85; RF45-3

Farmers Union Central Exchange, Inc. (CENEX), an agricultural cooperative, filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order which it entered into with the Montana Power Company (Montana Power). CENEX used propane it purchased from Montana Power as a motor gasoline additive. The cooperative estimated that it resold 98.78 percent of the gasoline so produced to its end-user members. Because CENEX is an agricultural cooperative, it was not required to submit a detailed showing of injury. The DOE found it appropriate to limit CENEX's refund to the portion of its full volumetric share corresponding to the estimated percentage of Montana Power propane CENEX resold to its members. Therefore, CENEX was awarded a refund comprising $22,242 principal and $16,230 interest.

National Helium Corporation/Missouri et al., 11/5/85; RQ3-197 et al.

The Office of Hearings and Appeals issued a Decision and Order to the States of Missouri, Ohio, West Virginia, Indiana and Florida denying, approving or partially approving their restitutionary proposals in nine second-stage refund proceedings pursuant to consent orders with the following companies: National Helium Corp. (NHC), Pennzoil Co. (Pennzoil), Charter Co. (Charter), Windham Gas and Oil (Windham), Webster Oil Co. (Webster), Vickers Energy Corp. (Vickers), Perry Gas Processors, Inc. (Perry), Standard Oil Co. (Indiana) (Amoco), and Palo Pinto Oil and Gas (Palo Pinto). The OHA partially approved Missouri's restitutionary plan to use $182,371.62 in principal and interest from the Vickers, Webster and NHC funds for a ridesharing and traffic response signal system. Ohio's proposed plans to fund ride sharing, home energy audit, vanpool (Portage County) and subsidized home weatherization loan programs were approved in the amount of $636,075.66 in principal and interest from the Pennzoil, Windham and NHC escrow accounts. The OHA denied West Virginia's plan to use $172,743 including interest from the Pennzoil and NHC escrow accounts to fund a traffic signal synchronization project in Clarksburg, West Virginia since only a small portion of injured consumers would benefit by the program. The OHA partially approved Indiana's plan to use $1,213,608 of the Amoco, Pennzoil, and Perry funds for: (i) A furnace retrofit program; (ii) an agricultural energy conservation program; and (iii) a home weatherization program. The OHA disapproved Indiana's proposed community transportation program and sought additional information concerning an alternate financing program for businesses making energy-saving capital investments. Finally, the OHA partially approved Florida's plan to use $167,133 (including interest) from the Charter, Perry and NHC funds for an agricultural energy conservation project and a traffic light synchronization program for central Florida. Due to litigation involving the distribution of the Vickers and NHC funds, the OHA stated that it would disburse those funds to Missouri, Ohio, Indiana and Florida for the programs approved in the Decision after final decisions in the relevant litigation.

Sid Richardson Carbon & Gasoline Company/Small's LP Gas Company, 11/6/85; RF26-20

Small's LP Gas Company filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Sid Richardson Carbon & Gasoline Company. The firm claimed a refund on the basis of its purchase of 794,800 gallons of propane from Sid Richardson during the consent order period. The DOE determined that Small's LP Gas Company's claim was at the presumption of injury threshold level of $5,000. The DOE therefore granted Small's a refund of $5,000 plus accrued interest of $3,942.45 for a total refund of $8,942.45.

Dismissals

The following submissions were dismissed:

Name	Case No.
Arizona Fuels Corp	HCX-0027, DEX-0156
ERA/Airport Texaco	HRR-0114
ERA/Expressway 66	HRR-0116
U.S. Oil Co	HRD-0286

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, DC 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.

Dated: November 26, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-28962 Filed 12-5-85; 8:45 am]

BILLING CODE 6450-01-M

Northeastern Oil Co.; Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

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 $30,000 obtained as a result of a consent order which the DOE entered into with Northeastern Oil Company, Inc., a reseller-retailer of motor gasoline located in Gillette, Wyoming. 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 NOCI 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-0139 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.

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 Decision and Order set out below. The Decision relates to a consent order entered into by the DOE and Northeastern Oil Company, Inc. (NOCI) which settled possible pricing violations in NOCI's sales of motor gasoline during the consent order period, December 18, 1978, through April 30, 1980. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the NOCI consent order

funds was issued on September 12, 1985. 50 FR 38175 (September 20, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by NOCI pursuant to the consent order. The DOE has decided that the consent order funds should be distributed to individuals and firms which purchased motor gasoline from NOCI during the consent order period, provided each files an application for refund and makes any necessary showing of injury. These purchasers will be required to provide specific documentation concerning the volume and price 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 of its purchase volumes to document its injury.

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by customers who purchased motor gasoline from NOCI 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 26, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Northeastern Oil Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0139

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 Northeastern Oil Company, Inc. (NOCI). This Decision and Order contains the procedures which the OHA has formulated to distribute the funds received pursuant to that consent order.

I. Background

NOCI is a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR 212.31 and is located in Gillette, Wyoming. A DOE audit of NOCI's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit alleged that during the period December 18, 1978, through April 30, 1980 (the consent order period), the prices received for certain volumes of motor gasoline sold by NOCI were in excess of the allowable prices under 10 CFR 212.93.

In order to settle all claims and disputes between NOCI and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, NOCI and the DOE entered into a consent order on September 29, 1980. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that any violations occurred. Additionally, the consent order states that NOCI does not admit that it violated the regulations.

Under the terms of the consent order, NOCI was required to deposit $30,000.00 into an interest-bearing escrow account for ultimate distribution by the DOE. NOCI remitted this sum on March 16, 1981.[1]

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth in 10 CFR Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On September 12, 1985, the OHA 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 NOCI's alleged violations in its sales of motor gasoline during the consent order period. 50 FR 38175 (September 20, 1985). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for injuries that were experienced as a result of actual or alleged violations of the DOE regulations.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. In addition, a copy of the PD&O was mailed to each purchaser identified in the audit file whose address was available. Copies were also sent to various service station dealers' associations. None of NOCI's customers submitted comments on the proposed procedures. Comments were submitted 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 NOCI refund proceeding. Any procedures pertaining to the disposition of any moneys 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.

III. Refunds to Identifiable Purchasers

In the first stage of the NOCI refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by NOCI's alleged overcharges. In order to be eligible to receive a refund, claimants will have to file an application and, with three exceptions discussed later in this Decision, show the extent to which they have been injured by the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the consent order fund.

In this case we will adopt three rebuttable presumptions regarding injury. These presumptions have been used in many previous special refund cases. First, we will not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased NOCI motor gasoline and passed the alleged overcharges associates with that product through to their end-user members. Second, we will presume that purchasers of NOCI products who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. Third, we will adopt a presumption that spot purchasers were not injured. Lastly, we will make a finding that end-users or ultimate consumers of NOCI products

[1] As of October 31, 1985, the NOCI escrow account contained a total of $50,838.38, representing $30,000 in principal and $20,838.38 in accrued interest.

whose business operations were unrelated to the petroleum industry were injured by the alleged overcharges. Prior OHA decisions provide detailed explanations of the bases of these presumptions and the end-user finding. *E.g.*, True Co., 13 DOE ¶ 85178 at 88484–85 (1985). We also explained the rationale for thee presumptions in the PD&O. 50 FR 38175 at 38176–77 (September 20, 1985). These presumpions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

In the PD&O we proposed that a demonstration of "banks" of unrecovered product costs, along with information regarding an applicant's competitive disadvantage in its local market, would be a sufficient showing of injury for reseller-retailer applicants claiming refunds above the $5,000 threshold.[2] *See, e.g., Triton Oil and Gas Corp./Cities Service Company*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Company/Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). We will continue to use this requirement for non-threshold-tpe reseller applicants, but we will use a modified requirement for retailers.

A modification of the injury demonstration for retailers is justified because for most of the 16½ month NOCI consent order period, specifically 9½ months, retailers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 29546 (1980). Instead, effective July 16, 1979, a retailer was required to calculate its MLSP under a fixed-margin approach set forth in the new rule. Unrecouped increased product costs could no longer be banked for later recovery. *Id.* Consequently, retailers were not required to maintain or compute cost banks during the 9½ month period. As a result, any requirement that a retailer claimant make a demonstration of injury like that contemplated for resellers, i.e., based on unrecouped cost banks, would probably eliminate all retailer claimants for the bulk of the consent order period.

Therefore, in this proceeding, we propose that retailers which lack banks subsequent to July 16, 1979 may still file a claim for a refund which exceeds the small claim threshold. Retailers should, however, submit bank calculations from December 18, 1978 through July 16, 1979.[3] Like resellers, retailers will be required for the entire consent order period to show that market conditions prevented them from recovering those increased product costS, i.e., through a demonstration of lowered profit margins, decreased market shares, or depressed sales volumes.[4]

IV. Calculation of Refund Amounts

We will use a volumetric method to divide the settlement monies among applicants who demonstrate that they are eligible to receive refunds. This method presumes that the alleged overcharges were spread equally over all the gallons of motor gasoline which NOCI sold. We have calculated a volumetric refund amount by dividing the consent order amount by the approximate number of gallons which NOCI sold during the period covered by the consent order. Successful claimants will receive refunds based on their purchase volumes multiplied by the volumetric refund amount. We have set the NOCI volumetric refund amount at $0.014770 per gallon.[5] In addition, successful claimants will receive a proportionate share of the accrued interest.

We recognize that a particular purchaser could have suffered a disproportionate share of the injury. Any purchaser who can make a showing of disproportionate overcharge may file a refund application based on such a claim.

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 Company*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

V. Application for Refund

We have determined that by using the procedures described above, we can distribute the NOCI consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refunds from individuals and firms who purchased motor gasoline from NOCI during the period December 18, 1978, through April 30, 1980.

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of motor gasoline from NOCI. Purchasers will be required to provide specific information as to the volume of motor gasoline purchased, the date of purchase, the name of the firm from which the purchase was made, and the extent of any injury alleged. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above.

In addition, all applications must state:

(1) Whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(2) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(3) Whether the applicant is or has been involved as a party in DOE enforcement or private, Part 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

[2] This injury requirement reflects the nature of the petroleum price regulations in effect beginning August 19, 1973, and ending July 16, 1979 for retailers, and May 1, 1980 for resellers. Under the original rules, a retailer or reseller of motor gasoline was required to compute its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973 with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

[3] The cost bank requiremnt has been relaxed in other instances regarding the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,005 at 88,017 n.1 (1982) (Tenneco).

[4] Resellers of retailers of NOCI products who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

[5] This figure has been calculated from information contained in ERA's audit workpapers. The audit examined sales made between September 1, 1979, and November 30, 1979, which amounted to 369,301 gallons. From this number, we estimated that NOCI's sales for the entire consent order period totaled 2,031,155 gallons. We then divided the consent order funds ($30,000) by our estimate of NOCI's total sales (2,031,155 gallons) to obtain the volumetric factor of $0.014770.

(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 applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Docket Room of the Office of 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-0139 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 Northeastern Oil Company, Inc. pursuant to the consent order executed on September 29, 1980, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: November 26, 1985

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-28963 Filed 12-5-85; 8:45 am]

BILLING CODE 6450-01-M

Pacer Oil Co.; Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

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 $39,114.54 obtained as a result of a consent order which the DOE entered into with Pacer Oil Company of Florida, Inc., a reseller-retailer of motor gasoline formerly located in Oormond Beach, Florida. 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 Pacer 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-0143 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.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered into by the DOE and Pacer Oil Company of Florida, Inc., which settled possible pricing violations in Pacer's sales of motor gasoline during the consent order period, July 1, 1979, through December 31, 1979. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Pacer consent order funds was issued on September 10, 1985. 50 FR 38186 (September 20, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Pacer pursuant to the consent order. The DOE has decided that the consent order funds should be distributed to individuals and firms which purchased motor gasoline from Pacer during the consent order period, provided each files an application for refund and makes any necessary showing the injury. These purchasers will be required to provide specific documentation concerning the volume and price 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 of its purchase volumes to document its injury.

As the Decision of Order published with this Notice indicates, applications for refunds may now be filed by customers who purchased motor gasoline from Pacer during the consent order period. Applications will be accepted provided they are filed in duplicate and received on 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 29, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Pacer Oil Company of Florida, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0143.

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 Pacer Oil Company of Florida, Inc. (Pacer). This Decision and Order contains the procedures which the OHA has formulated to distribute the funds received pursuant to that consent order.

I. Background

Pacer is a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR 212.31 and was located in Oormond Beach, Florida. A DOE audit of Pacer's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit alleged that between July 1, 1979, and December 31, 1979 (the consent order period), Pacer committed possible pricing violations amounting to $185,274.48 with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Pacer and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, Pacer and the DOE entered into a consent order on October 7, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that any violations occurred. In addition, the consent order states that Pacer does not admit that it violated the regulations.

The consent order required that Pacer deposit $34,127 into an interest-bearing escrow account for ultimate distribution by the DOE. Pacer paid this amount, plus interest which had accrued on the

unpaid portion, over a two-year period ending September 7, 1983. The firm paid a total of $39,114.54, including interest, into the escrow account. We have treated this latter figure as the principal in this Decision.[1]

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth in 10 CFR Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On September 10, 1985, the OHA 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 showing of injury as a result of Pacer's alleged violations in its sales of motor gasoline during the consent order period. 50 FR 38186 (September 20, 1985). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for injuries that were experienced as a result of actual or alleged violations of the DOE regulations.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. In addition, a copy of the PD&O was mailed to each purchaser identified in the audit file whose address was available. Copies were also sent to various service station dealers' associations. None of Pacer's customers submitted comments on the proposed procedures. Comments were submitted 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 Pacer 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.

III. Refunds to Identifiable Purchasers

In the first stage of the Pacer refund proceeding, we will distribute the funds currently in escrow to claimants that demonstrate that they were injured by the alleged overcharges. In order to be eligible to receive a refund, claimants will have to file an application and, with three exceptions which will be discussed later in this Decision, show the extent to which they were injured by the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the consent order fund.

In this case we will adopt three rebuttable presumptions regarding injury. These presumptions have been used in many previous special refund cases. First, we will not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased Pacer motor gasoline and passed the alleged overcharges associated with that product through to their end-user members. Second, we will presume that purchasers of Pacer motor gasoline who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. Third, in the absence of compelling material, we will adopt a presumption that spot purchasers were not injured. Lastly, we will make a finding that end-users or ultimate consumers of Pacer products whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Prior OHA decisions provide detailed explanations of the bases of these presumptions and the end-user finding. *E.g., True Co.*, 13 DOE ¶ 85,178 at 88,484–85 (1985). The rationale for these presumptions was also fully explained in the PD&O. 50 FR 38186 at 38187–88 (September 20, 1985). These presumptions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

In the PD&O we proposed that a demonstration of "banks" of unrecovered product costs, along with information regarding an applicant's competitive disadvantage in its local market, would be a sufficient showing of injury for reseller-retailer applicants claiming refunds above the $5,000 threshold.[2] *See, e.g., Triton Oil and Gas Corp./Cities Service Company*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Company/Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). We will continue to use this requirement for non-threshold-type reseller applicants, but we will use a modified requirement for retailers.

A modification of the injury requirement is justified because for 5½ months of the 6 month Pacer consent order period, retailers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 29546 (1980). Instead, effective July 16, 1979, a retailer was required to calculate its MLSP under a fixed-margin approach set forth in the new rule. Unrecouped increased product costs could no longer be banked for later recovery. *Id.* Consequently, retailers were not required to maintain or compute cost banks during the 5½ month period. As a result, any requirement that a retailer claimant make a demonstration of injury like that contemplated for resellers, i.e., based on unrecovered cost banks, would effectively eliminate all retailer claimants for the bulk of the consent order period.

Therefore, in this proceeding, we propose that retailers which lack banks subsequent to July 16, 1979 may still file a claim for a refund which exceeds the small claim refund.[3] Like resellers, retailers will be required for the entire consent order period to show that market conditions prevented them from recovering those increased product costs, i.e., through a demonstration of reduced profit margins, decreased market shares, or depressed sales volumes.[4]

---

[1] As of October 31, 1985, the Pacer escrow account contained a total of $52,210.58, representing $39,114.54 in principal (including installment interest), and $13,096.04 in accrued interest.

[2] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973, with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

[3] The cost bank requirement has been relaxed in other instances involving the change in the pricing regulations for motor gasoline. *See* Tenneco O[il] Company/United Fuels Corporation, 10 DOE ¶ 85,005 at 88,017 n.1 (1982) (Tenneco).

[4] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

A. Calculation of Refund Amounts

We will use a volumetric method to divide the settlement monies among applicants who demonstrate that they are eligible to receive refunds. This method presumes that the alleged overcharges were spread equally over all the gallons of motor gasoline which Pacer sold. We have calculated the volumetric refund amount by dividing the consent order amount by the approximate number of gallons of motor gasoline which Pacer sold during the period covered by the consent order. Successful claimants will receive refunds based on their purchase volumes multiplied by the volumetric refund amount. We have set the Pacer volumetric refund amount at $0.003435 per gallon.[5] In addition, successful claimants will receive a proportionate share of the accrued interest.

We recognize that a particular purchaser could have suffered a disproportionate share of the injury. Any purchaser who can make a showing of disproportionate overcharge may file a refund application based on such a claim.

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 ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

IV. Applications for Refund

We have determined that by using the procedures described above, we can distribute the Pacer consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refunds from individuals and firms who purchased motor gasoline from Pacer during the period July 1, 1979 through December 31, 1979.

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of motor gasoline from Pacer. Purchasers will be required to provide specific information as to the volume of motor gasoline purchased, the date of purchase, and the extent of any injury alleged. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above.

[5] This figure is derived by dividing the $39,114.54 principal amount by the 11,387,105 gallons of motor gasoline sold by Pacer during the consent order period.

In addition, all applications must state:

(1) Whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(2) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(3) Whether the applicant is or has been involved as a party in DOE enforcement or private, Part 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 the OHA informed of any change in status while its application for refund is pending. *See* 10 CFR 2505.9(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 applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Docket Room of the Office of 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-0143 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

It is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by Pacer Oil Company of Florida, Inc. pursuant to the consent order executed on October 7, 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 29, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-28964 Filed 12-5-85; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Power Rate Adjustment for the Pick-Sloan Missouri Basin Program-Eastern Division

AGENCY: Western Area Power Administration, Energy.

ACTION: Notice of Power Rate Adjustment for Maintenance Service and Order placing this rate adjustment into effect on a final basis: Pick-Sloan Missouri Basin Program-Eastern Division (P-SMBP-ED).

SUMMARY: In a August 9, 1985, Federal Register notice, the Western Area Power Administration (Western) announced plans to increase the rate charged for maintenance service. Following the analysis of the public comments received as a result of this proposal, Western has finalized and is placing into effect new rates for maintenance service for the P-SMBP-ED, as follows:

1. 14.0 mills/kwh for guaranteed availability of 1 week or less.

2. A rate to be established by Western's Administrator from time to time for guaranteed availability of longer than 1 week, but less than 5 weeks. The Administrator hereby established that rate at 16.0 mills/kwh.

These new rates will become effective the first day of the first full billing period on or after January 1, 1986, and will remain in effect until different rates are established and placed into effect on a final basis by the Administrator.

FOR FURTHER INFORMATION CONTACT: Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box EGY, Billings, MT 59101, (406) 657-6532.

SUPPLEMENTARY INFORMATION: Maintenance service in the Eastern Division was first offered in 1966 at a rate of 4 mills/kWh. The rate remained at 4 mills/kWh until 1975, when it was increased to 8 mills/kWh. In 1976, it was increased to 10 mills/kWh and remained there until August 1982, when it was increased to 12 mills/kWh.

Since 1975, the rate for maintenance service has been set on the basis of the approximate average price between Western's onpeak and offpeak replacement energy sales. Replacement energy is another category of Western's surplus energy sales, and has a rate directly related to the quoted

decremental fuel cost of the generating unit being replaced. Western's marketing of hydropower provides not only that surplus energy be sold during times of high river flow, but also requires that energy be purchased at times of low flows. Because energy purchases from regional utilities must be made on the basis of their fuel costs, sound business principles require that Western's surpluses also be sold on the basis of utilities' fuel costs.

Maintenance sales are normally made on a delivery pattern similar to the generation pattern of the generating unit down for maintenance. At one time, Western committed maintenance sales for the total length of time the fossil-fueled unit was expected to be down for maintenance. However, Western has limited surplus energy available, and a longer-term commitment tends to reduce the number of entities to whom maintenance energy could be made available. As a result, commitments have been shortened to periods of approximately 1 week, which accommodate more entities.

When marketing surplus energy, Western usually markets a portion as replacement energy and a portion as maintenance energy. Utilities generally schedule unit maintenance during the fall and spring months, when loads are not high. Maintenance energy sales provide offpeak loads during those periods when Western's firm power loads are not always sufficient to accommodate the minimum loading requirements of the hydrogenerators. However, since the previous maintenance rate was low as compared to replacement energy rates, it had become uneconomical to commit to maintenance sales. Very little maintenance energy has been sold recently because most of the available surplus energy has been sold in the replacement market. The rates being adopted reestablish the incentive for Western to sell maintenance energy, thus assisting in minimum unit loading problems and providing greater cost savings to regional power suppliers.

Based on the history of recent replacement sales and the cost of energy from regional thermal units which could be expected to provide a similar service, the 14 mills per kWh rate appears reasonable. Based on the longer period of providing maintenance, a rate greater than 14 mills per kWh is competitive and in line with other alternatives in the area. Approximately 9,100 MW of existing coal-fired generation in the Mid-Continent Area Power Pool have production costs less than 16 mills/kWh. These are the units supplying a significant portion of the area load and are the units that will require maintenance service. The remaining generation of approximately 10,000 MW in the area have costs higher than 16 mills/kWh. These higher-cost units are the ones that will have to supply maintenance energy if Western's service is unavailable. Because of this existing economic situation, 16.0 mills/kWh has been established as the rate for Western's maintenance service for 1 to 5 week durations. This rate will remain in effect until changed by the Administrator. An additional consideration is that providing maintenance energy for periods longer than 1 week presents certain risks and missed opportunity for better replacement sales.

Expected Change in Annual Revenue

Enhanced revenues anticipated from short-term maintenance service sales will help to delay future firm power rate increases and benefit all P-SMBP preference customers. From an operations point of view, there will be a shift of replacement energy sales to maintenance energy sales. Some of the energy shifted from offpeak replacement sales to maintenance energy sales will be sold at an enhanced level. Also, without a rate adjustment, some energy would have been sold as maintenance, but due to the rate adjustment will now provide additional revenue.

Discussion of Issues—Public Comments

Western received seven written comments during the 90-day public information and comment period. Five of these comments were in favor of the proposed increase. One comment in objection stated that the increase was too large, and was being proposed at a time when everyone is generally trying to hold costs down and at a time when coal contracts are being renegotiated at reduced rates. As discussed, without this rate adjustment, Western has little incentive to sell maintenance energy. This rate adjustment tends to hold costs down since, by increasing the availability of maintenance energy, regional consumers can expect to benefit. The other comment objected to the methodology of pricing which Western used in setting these rates. As discussed above, Western feels that this type of service must have a direct relationship to the fuel costs of other area power suppliers and that the methodology used to set these rates is justified. During the public comment forum which Western conducted in Sioux Falls, South Dakota, on September 25, 1985, two oral comments were read into the official record. One was in favor of the proposal. The other objected to the proposed rate of 16.0 mills/kWh for durations between 1 to 5 weeks on the basis that it may not always be competitive in the existing spot-purchase coal market. It was suggested that perhaps a more flexible approach could be adopted in establishing the new maintenance rate.

After consideration of all of the comments received during the public participation period, Western has determined that a fixed rate of 14.0 mills/kWh is appropriate for maintenance service up to 1 week in duration. However, the rate for maintenance service for 1 to 5 week durations will be flexible. This rate will be reviewed and adjusted by the Administrator as necessary.

Procedural Authorization

Power rates for the P-SMBP are established pursuant to the Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101, *et. seq.*); the Reclamation Act of 1902 (43 U.S.C. 372, *et. seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); the Flood Control Act of 1944; and the acts specifically applicable to the project system involved.

The Secretary of Energy issued Delegation Order No. 0204-108 on December 14, 1983 (48 FR 55664, December 14, 1983). The order contains several provisions including delegating to the Administrator the authority to develop and place in effect on a final basis power and transmission rates for short-term sales.

Environmental Compliance

Western has conducted an analysis of this rate increase pursuant to the National Environmental Policy Act of 1969 and Department of Energy regulations published in the **Federal Register** on March 28, 1980 (45 FR 20694-20701), as amended on January 6, 1983 (48 FR 685-686), and on February 25, 1985 (50 FR 7629-7630). The results of that analysis are as follows:

1. Rate increases for power marketing services which exceed the rate of inflation since their last increase normally require the preparation of an environmental assessment (EA), but not necessarily an environmental impact statement (EIS).

2. Contracts for short-term or seasonal (less than 1 year) allocations of existing or excess power resources to customers who can receive the resources over existing transmission facilities do not require the preparation of either an EA

or an EIS, in accordance with National Environmental Policy Act guidelines (50 FR 7629).

Because the proposed rate increase for maintenance service is for an optional short-term service and would clearly have no significant environmental impact, it has been determined that the proposed action does not require the preparation of an EA or an EIS. Documentation supporting this decison is on file in Western's Billings Area Office. By approving this notice, the Administrator of Western concurs in the above analysis.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et. seq.*) each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment, an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for P-SMBP relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates of service or particular applicability are not considered "rules" within the meaning of the Act. Since the rate for P-SMBP power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Order

In view of the foregoing, and pursuant to the authority delegated to me by the Secretary of Energy in Delegation Order No. 0204-108, dated December 14, 1983, I hereby approve and place into effect on a final basis, effective the first day of the first full billing period after January 1, 1986, new rates for maintenance service for the Pick-Sloan Missouri Basin Program-Eastern Division as follows:

1. 14.0 mills/kWh for guaranteed availability of 1 week or less.

2. A rate to be established by the Administrator from time to time for guaranteed availability of longer than 1 week, but less than 5 weeks. The Administrator hereby establishes that rate at 16.0 mills/kWh.

Issued at Golden, Colorado, November 27, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85-29019 Filed 12-5-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51599; FRL-2933-1]

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 twenty-eight PMNs and provides a summary of each.

DATES: Close of Review Period: P 86-182, February 9, 1986. P 86-172 and P 86-173, February 12, 1986. P 86-176 and P 86-177, February 15, 1986. P 86-178, P 86-179, P 86-180, P 86-181, P 86-183 and P 86-184, February 16, 1986. P 86-185, P 86-186, P 86-187, P 86-188, P 86-189, P 86-190, P 86-191, P 86-192, P 86-193, P 86-194, P 86-195 and 86-196, February 17, 1986. P 86-197, P 86-198, P 86-199, P 86-200 and P 86-201, February 18, 1986.

Written comments by: P 86-182, January 10, 1986. P 86-172 and P 86-173, January 13, 1986. P 86-176 and 86-177, January 16, 1986. P 86-178, P 86-179, P 86-180, P 86-181, P 86-183 and P 86-184, January 17, 1986. P 86-185, P 86-186, P 86-187, P 86-188, P 86-189, P 86-190, P 86-191, P 86-192, P 86-193, P 86-194, P 86-195 and P 86-196, January 18, 1986. P 86-197, P 86-198, P 86-199, P 86-200 and P 86-201, January 19, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51599]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Confidential Data Branch, Information Mangement 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 86-172

Manufacturer. Confidential.

Chemical. (G) Azosubstituted aminonaphthol salt.

Use/Production. (G) Open, non-dispersive use. Prod. range. 1,000-28,450 kg/yr.

Toxicity Data. No data in the PMN substance submitted.

Exposure. Manufacture and processing: dermal, a total of 24 workers, up to 1.5 hrs/da, up to 45 da/yr.

Environmental Release/Disposal. 0-45 kg/batch released to air or land. Less than 45 kg/batch sent to contract disposal or incinerated.

P86-173

Manufacturer. Confidential.

Chemical. (G) Azosubstituted aminonaphthol salt.

Use/Production. (G) Chemical intermediate. Prod. range. 1,000-28,500 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: dermal, a total of 14 workers, up to 2 hrs/da, up to 45 da/yr.

Environmental Release/Disposal. No data submitted.

P86-176

Importer. Rohm and Haas Company.

Chemical. (G) Acid salt of a modified acrylic copolymer.

Use/Import. (S) Industrial retanning agent for leather. Import range. Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Slight, Eye—Moderate.

Exposure. Confidential.

Environmental Release/Disposal. Release to water. Disposal by landfill.

P86-177

Importer. Austin Chemical Company, Inc.

Chemical. (S) N-(2-Pyrimidinyl)piperazine dihydrochloride.
Use/Import. (S) Site-limited intermediate in the synthesis of a pharmaceutical product. Import range. 50–2,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: inhalation, a total of 4 workers.
Environmental Release/Disposal. No data submitted.

P86–178

Manufacturer. Confidential.
Chemical. (G) Modified styrene acrylic polymer.
Use/Production. (G) Used in the preparation of a coating which will be industry applied to non-consumer articles. Prod. range. 15,000–77,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 30 workers, up to 8 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. 6 to 100 kg/batch released to land. Disposal by incineration and landfill.

P86–179

Manufacturer. Confidential.
Chemical. (G) Polyester of a vegetable oil derivative and modified hexanediol.
Use/Production. (G) Multiple use industrial coating. Prod range 50,000–376,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 52 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. 1 to 140 kg/batch released to land. Disposal by landfill and incineration.

P86–180

Manufacturer. Confidential.
Chemical. (G) Urethane polymer, blocked diisocyanate polymer.
Use/Production. (S) Coatings. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 8 workers, up to 5 hrs/da, up to 6 da/yr.
Environmental Release/Disposal. No data submitted.

P86–181

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Modified hydrocarbon resins.
Use/Production. (S) Industrial resin component in production of ink vehicle varnishes and coatings. Prod range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers, up to 4 hrs/da, up to 50 batch/yr.
Environmental Release/Disposal. 500 grams/day released to land. Disposal by sanitary landfill.

P86–182

Importer. Urethane Concepts, Inc.
Chemical. (G) Amine containing polyether polyol.
Use/Import. (G) Industrial polyol component in flexible polyurethane foam. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No data submitted.

P 86–183

Manufacturer. Confidential.
Chemical. (G) Modified alkyd resin.
Use/Production. (S) Resin used in automotive top-coats. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–184

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Resin used in automotive top-coats. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–185

Importer. Marubeni America Corporation.
Chemical. (S) 1H-1,2,4-Triazolium, 1,4-dimethyl-5-[[4-[methyl(phenylmethyl)amino]phenyl] azo]-, trichlorozincate(1-).
Use/Import. (S) Dye for acrylic fibres. Import range. 10,000 kg/yr.
Toxicity Data. Acute oral: >2,000 mg/kg.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86–186

Importer. Marubeni America Corporation.
Chemical. (S) 6-chloro-l-ethyl-2-(4-N,N-diethylamino)phenyl-benzi[C,d]indolium-chloride.
Use/Import. (S) Dye for acrylic fibres. Import range. 10,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86–187

Importer. Marubeni America Corporation.
Chemical. (S) Phenoxazin-5-ium, 3-(diethylamino)-7-(phenyl-amino)-, trichlorozincate(1-).
Use/Import. (S) Dye for acrylic fibres. Import range. 10,000 kg/yr.
Toxicity Data. Acute oral: >2,000 mg/kg.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86–188

Importer. Marubeni America Corporation.
Chemical. (S) [Mu3-[7-[[6-[[4'-[(4,5-dihydro-3-methyl-5-oxo-1-phenyl-1H-pyrazol-4-yl)azo]-3,3'-dihydroxy-[1,1'-biphenyl]-4-yl]azo]-1,5-dihydroxy-7-sulfo-2-naphthalenyl]azo]-8-hydroxy-1,3,6-naphtalenetrisulfonato(10-)]]tri-, tetrasodium.
Use/Import. (S) Dye for acrylic fibres. Import range. 10,000 kg/yr.
Toxicity Data. Acute oral: >2,000 mg/kg.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86–189

Manufacturer. Confidential.
Chemical. (G) Amine Capped epoxy.
Use/Production. (S) Site-limited and industrial coatings. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 8 workers, up to 14 hrs/da.
Environmental Release/Disposal. No release.

P 86–190

Manufacturer. Confidential.
Chemical. (G) Mixed acrylic ester copolymer with monobasic acid modified alkyd resin.
Use/Production. (G) Binder for industrial baking finishes. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers.
Environmental Release/Disposal. Confidential.

P 86–191

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphate salt of an acylated polyamine.
Use/Production. (G) Oil additive. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-192

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphate salt of an acylated polyamine.
Use/Production. (G) Oil additive. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-193

Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane ionomer.
Use/Production. (S) Industrial adhesive for binding plastices. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 40 workers, 8 hrs/da, 2 da/yr.
Environmental Release/Disposal. 0.2 to 10 kg/batch released to water. Disposal by biological treatment.

P 86-194

Importer. Confidential.
Chemical. (G) Caprolactam-blocked cycloaliphatic diisocyanate.
Use/Import. (S) Crosslinker for industrial coatings. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. None anticipated.
Environmental Release/Disposal. None anticipated.

P 86-195

Manufacturer. Confidential.
Chemical. (G) Quaternary ammonium salt of siloxane and amidine.
Use/Production. (G) Intermediate for processing polyurethane foam. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 6.0 hrs/da, up to 4 da/yr.
Environmental Release/Disposal. 3 kg/batch released to water. Disposal by wastewater treatment facility.

P 86-196

Importer. Confidential.
Chemical. (G) Oil-free saturated polyester.
Use/Import. (S) Resin used to prepare urethane powdered industrial coatings. Import range. 50,000-150,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. None anticipated.
Environmental Release/Disposal. None anticipated.

P 86-197

Importer. Confidential.
Chemical. (G) Polymer of functional acrylulates and methacrylates.
Use/Production. (G) Resin for a paint product. Import range. 50,000-100,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No date submitted.
Environmental Release/Disposal. No Date submitted.

P 86-198

Importer. Confidential.
Chemical. (G) Polymer of functional acrylates and methacrylates.
Use/Production. (G) Resin for a paint product. Import range. 50,000-100,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No date submitted.
Environmental Release/Disposal. No Date submitted.

P 86-199

Importer. Confidential.
Chemical. (G) Polymer of functional acryulates and methacrylates.
Use/Production. (G) Resin for a paint product. Import range. 50,000-100,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No date submitted.
Environmental Release/Disposal. No Date submitted.

P 86-200

Importer. Confidential.
Chemical. (G) Alkylamine ploygIycol ether.
Use/Import. (S) Antistatic agent in the carpet finishing area. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. No date submitted.
Environmental Release/Disposal. No Date submitted.

P 86-201

Importer. Confidential.
Chemical. (G) Polymer of partial ester of polyol with a carboxylic anhydride and an olefin, partial salt.
Use/Import. (S) Industrial emulsifying agent with lubricating and anti-corrosion properties. Import range. Confidential.
Toxicity Data. Acute oral: >15 mL/kg; Irritation: Skin—None-irritant; Eye—Non-irritant; Ames test: Non-mutagenic.
Exposure. No date submitted.
Environmental Release/Disposal. No Date submitted.

Date: November 25, 1985.

Linda A. Travers,

Acting Director, Information Managment Division.

[FR Doc. 85-286700 Filed 12-5-85; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59742; FRL-2932-9]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of six such PMNs and provides a summary of each.

DATES: Close of Review Period: Y 86-35, 86-36 and 86-37, December 5, 1985. Y 86-38 and 86-39, December 9, 1985. Y 86-40, December 11, 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 86-35

Importer. Nuodex Inc.
Chemical. (G) Copolyamide from dibasic acid, diamine and C_{12}-lactam.
Use/Import. (S) Industrial hot-melt adhesive. Import range. 10,000-30,000 kg/yr.
Toxicity Data. Acute oral: >110,000 mg/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant; Ames test: Non-mutagenic.
Exposure. No exposure.
Environmental Release/Disposal. No release.

Y 86-36

Manufacturer. Confidential.
Chemical. (G) Modified tall oil alkyd.
Use/Production. (S) Site-limited intermediate. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-37

Manfacturer. Confidential.
Chemical. (G) Styrenated/acrylated alkyd.
Use/Production. (S) Industrial, commercial and consumer general purpose metal coating. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-38

Manfacturer. Reichhold Chemicals, Inc.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Industrial and commerical automobile body patch. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-39

Importer. Confidential.
Chemical. (G) Hydroxy functional acrylic copolymer.
Use/Import. (S) Industrial thermosetting decorative and protective coatings. Import range. 75,000-225,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Limited exposure.
Environmental Release/Disposal. No release.

Y 86-40

Manfacturer. Confidential.
Chemical. (S) Polymer of linseed oil, adipic acid, benzoic acid, pentaerythritol and phtahlic anhydride.
Use/Production. (G) Site-limited intermediate. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: November 25, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-28701 Filed 12-5-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2934-5]

Environmental Impact Statements; Notice of Availability

RESPONSIBILE AGENCY: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed November 25, 1985 through November 29, 1985, pursuant to 40 CFR 1506.9.

EIS No. 850519, Final, COE, PR, Rio Puerto Nuevo Basin Flood Control Plan, San Juan, Due: January 6, 1986, Contact: Gerald Atmar (904) 791-2615.
EIS No. 850520, Final, BLM, SD, South Dakota Resource Area, Resource Management Plan, Due: January 6, 1986, Contact: Ray Brubaker (406) 232-4331.
EIS No. 850521, Final, NOA, AL, Weeks Bay National Estuarine Sanctury Management Plan, Due: January 6, 1986, Contact: Nancy Foster (202) 634-4236.
EIS No. 850522, Final, EPA, TX, Cummins Creek Surface Lignite Mine, NPDES Permit, Fayette County, Due: January 6, 1986, Contact: Clinton Spotts (214) 767-2716.

Dated: December 3, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-29040 Filed 12-5-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2934-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 18, 1985 through November 22, 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-AFS-J65143-00, Rating EC2, Manti-La Sal Nat'l Forest, Land and Resource Mgmt. Plan, UT and CO. Summary: EPA has identified numerous concerns regarding management of water quality standards, watersheds, vegetation, minerals, riparian and wetland areas, and aquatic life. To meet these EPA has requested additional individual and comulative impact analysis, and further discussion of best management practices, monitoring plans, plan implementation and coordination, and methods for correcting existing resource problems. State and EPA antidegradation requirements for water quality need to be addressed.

ERP No. D-BLM-K65102-NV, Rating EC2, Elko Resource Area, Resource Mgmt. Plan and Wilderness Designation Study, N. Fork, Buckhorn and Tuscarora Planning Units, NV. Summary: EPA recommended: (1) A reevaluation of proposed riparian habitat protection efforts; (2) more information on herbicide issues and air and water quality impacts; and (3) clarification of resource management concerns.

ERP No. DA-COE-K36014-CA, Rating EC2, Santa Ana R. Main Stem and Santiago Creek Flood Control Project, Mentone Dam Upstream Flood Storage Alternatives, CA. Summary: EPA requested more information on impacts and a firm commitment to the mitigation plans in regard to: (1) Riparian habitat, fisheries, and two candidate endangered species in the Santa Ana Wash; and (2) project impacts to air quality.

ERP No. D-FHW-E40088-TN, Rating EC2, TN-34 Bypass Construction, TN-34 SW of Johnson City to TN-137 NW of Johnson City, TN. Summary: EPA expressed major concern about water quality impacts associated with channelization, surface and groundwater impacts due to construction and secondary development, and noise impacts. EPA recommended that additional analysis be done to avoid or minimize and mitigate the proposed impacts.

ERP No. D-IBR-J31017-CO, Rating EC2, Grand Valley Unit Stage II Development, Construction and Operation, Colorado R. Basin Salinity Control Project, CO. Summary: EPA believes the proposed action is well conceived, but urges that additional wildlife habitat mitigation be considered and that the potential uses of water saved as a result of the proposed action be more clearly identified in the FEIS.

ERP No. D-VAD-F81011-MI, Rating LO, Allen Park Veterans Admin. Medical Center, Split Site Care Facility and Enlargement, MI. Summary: Although no preferred alternative is indicated, EPA believes none of the alternatives have significant positive or negative environmental impacts. EPA also outlined some omissions with regard to the hospital's PCB Compliance Policy which may have been due to the recent publication of the Transformer Fires Rule.

Final EISs

ERP No. F-BLM-J01068-UT, P R Spring and Hill Creek Special Tar Sand Areas, Oil and Gas Leases, Conversion to Combined Hydrocarbon Leases, UT.

Summary: EPA recommended that the Record of Decision reflect the additional hydrologic and geologic studies and PSD permitting sequence required prior to any mineral exploration or development activities.

ERP No. F-BLM-J70003-UT, Box Elder Planning Area, Resource Mgmt. Plan, UT. Summary: EPA's review expressed continued water quality concerns. Erosion would continue on about 1,330 acres of critical and severe erosion areas; and increased erosion if expected on almost 100,000 acres from Off Road Vehicle (ORV) use. EPA recommended a more agressive management approach be applied to these severe erosion areas and to problems such as ORV use in order to improve and protect water quality values.

ERP No. F-CDB-C89024-NY, Pierrepont St. Office Development, Construction, UDAG, NY. Summary: EPA commented that the outstanding issues in the Draft EIS concerning wastewater flows, water conservation measures, and CO concentrations have been adequately addressed in the Final EIS. The project may require a state operating permit or a PSD permit for emissions associated with the operation of emergency generators.

ERP No. F-FHW-C40080-NJ, NJ-20 Connector Completion, Construction, I-80 to CBD Loop Road, NJ. Summary: EPA commented that the outstanding air quality issue at the DEIS stage has been resolved in the FEIS. The revised air quality analysis reveals that no violations of the CO standard will occur as a result of the project.

ERP No. F-FHW-E40682-GA, Murray Road Construction, Washington Rd. and Cherry St. to Reynolds St., GA. Summary: EPA is primarily concerned about potential noise and wetland and floodplain impacts and their mitigation. Mitigation for noise impacts, which was considered but not proposed, and mitigation for wetland impacts, which was proposed for only a portion of the predicted losses, should both be further considered.

ERP No. F-FHW-F40242-IN, Broadway and Macedonia Corridor Improvement, S. Muncie Bypass/IN-67 to N. Muncie Bypass/IN-67, Right-of-Way Acquisition, IN. Summary: EPA's review has indicated that our previous concerns with noise impacts have been adequately discussed in the Final EIS.

ERP No. F-FHW-G40114-TX, US 59/ Southwest Freeway Improvement and Widening, Beltway 8 to TX-288, TX. Summary: EPA expressed no objection with the proposed action as described.

ERP No. F-UAF-E13000-GA, Winnersville Air-to-Surface Weapons Range, Construction and Operation, Near Moody AFB for Primary Use of the 347 Tactical Fighter Wing, GA. Summary: EPA's review finds that the issues we questioned in the draft document have been satisfactorily addressed.

ERP No. F-USA-G10000-TX, Camp Bullis, Combat Assault Landing Strip, Operations, Ft. Sam Houston, TX, Summary: EPA has no objections to the proposed action as described.

Amended Notice

The following review was completed during the week of November 12 through 15, 1985 and should have appeared in the FR Notice published on November 29, 1985.

ERP No. F-NRC-D00008-PA, Beaver Valley Power Station, Unit 2, Operating License, Ohio R., PA. Summary: EPA reviewed the FEIS and found deficiencies in discussion of water quality issues and in developing accident sequence probabilities.

Dated: December 3, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-29041 Filed 12-5-85; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Farm Credit System; Federal Land Bank Associations, Consolidation; Proposed Charter

AGENCY: Farm Credit Administration.

ACTION: Notice; Proposed Chartering of Districtwide Federal Land Bank Associations in the Ninth Farm Credit District.

SUMMARY: The Farm Credit Administration (FCA) has under consideration a proposal for the consolidation of certain Federal land bank associations (FLBAs) in the Ninth Farm Credit District that would involve amending the charter of the consolidated FLBA to serve the entire Ninth Farm Credit District, which encompasses the States of Colorado, Oklahma, New Mexico and Kansas. Shareholders of 24 FLBAs approved the merger at their special meetings on November 26, 1985. If the required regulatory approvals are given, the proposed merger would take effect on December 31, 1985.

The issuance of FLBA charters is a discretionary act pursuant to Section 5.18 of the Farm Credit Act of 1971, as amended, that does not require notice and comment. However, since the proposed consolidated association may serve some areas that may also be served by other associations, the FCA believes it appropriate to consider all comments of the public on the designation of the territory to be served. All interested parties are invited to submit written comments, addressed as specified below.

DATE: All comments must be received by December 20, 1985.

ADDRESS: All comments should be submitted in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Copies of all written communications received will be available for inspection by interested parties in the Office of the Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Thomas Holland, Funding and Operations Division, Office of Examination and Supervision, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4452.

Donald E. Wilkinson,

Governor.

[FR Doc. 85-29135 Filed 12-5-85; 8:45 am]

BILLING CODE 6705-01-M

Farm Credit System; Production Credit Associations; Consolidations; Proposed Charter

AGENCY: Farm Credit Administration.

ACTION: Notice; Proposed Chartering of Districtwide Production Credit Associations in the Ninth Farm Credit District.

SUMMARY: The Farm Credit Administration (FCA) has under consideration a proposal for the consolidation of certain Production Credit Associations (PCAs) in the Ninth Farm Credit District that would involve amending the charter of the consolidated PCA to serve the entire Ninth Farm Credit District, which encompasses the States of Colorado, Oklahoma, New Mexico and Kansas. Shareholders of 19 PCAs approved the consolidation at their special meetings on December 3, 1985. If the required regulatory approvals are given, the proposed consolidation would take effect on December 31, 1985.

The issuance of PCA charters is a discretionary act pursuant to Section 5.18 of the Farm Credit Act of 1971, as amended, that does not require notice and comment. However, since the proposed consoldiated association may serve some areas that may also be served by other associations, the FCA

believes it appropriate to consider all comments of the public on the designation of the territory to be served. All interested parties are invited to submit written comments, addressed as specified below.

DATE: All comments must be received by December 20, 1985.

ADDRESS: All comments should be submitted in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Copies of all written communications received will be available for inspection by interested parties in the Office of the Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Thomas Holland, Funding and Operations Division, Office of Examination and Supervision, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4452

Donald E. Wilkinson,

Governor.

[FR Doc. 85-29134 Filed 12-5-85; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Louisiana; Amendment to Notice of a Major-Disaster Declaration

[FEMA-752-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-752-DR), dated November 1, 1985, and related determinations.

DATED: November 23, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice:

The notice of a major disaster for the State of Louisiana dated November 1, 1985, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 1, 1985:

Ascension Parish for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-2893 Filed 12-5-85; 8:45 am]

BILLING CODE 6718-02-M

Pennsylvania; Amendment to Notice of a Major-Disaster Declaration

[FEMA-754-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA-754-DR), dated November 9, 1985, and related determinations.

DATE: November 27, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC. 20472, (202) 646-3616.

Notice

The notice of a major disaster for the Commonwealth of Pennsylvania, dated November 9, 1985, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 9, 1985:

Forward Township in Allegheny County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-28934 Filed 12-5-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-755-DR]

Virginia; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA-755-DR), dated November 9, 1985, and related determinations.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice:

The notice of a major disaster for the Commonwealth of Virginia, dated November 9, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 9, 1985:

Bedford, Greene, and York Counties for Public Assistance.

DATED: November 23, 1985.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-28935 Filed 12-5-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-753-DR]

West Virginia; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA-753-DR), dated November 7, 1985, and related determinations.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of West Virginia, dated November 7, 1985, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 7, 1985:

Berkeley County for Public Assistance.

Dated: November 23, 1985.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-28936 Filed 12-5-85; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-445]

American Savings Bank, F.S.B.; New York, NY; Final Action Approval of Conversion Application

Date: November 27, 1985.

Notice is hereby given that on September 24, 1985 the Office General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the amended application of American Savings Bank, FSB New York, New York, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-28981 Filed 12-5-85; 8:45am]

BILLING CODE 6720-01-M

[No. AC-455]

American Savings Bank, F.S.B. Tacoma, WA; Final Action Approval of Conversion Application

Date: November 27, 1985.

Notice is hereby given that on November 11, 1985, the Office General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of American Savings Bank, F.S.B., Tacoma, Washington, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Seattle, 600 Stewart Street, Seattle, Washington 98101.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-28982 Filed 12-5-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-460]

Brookfield Federal Savings and Loan Association Brookfield, IL; Final Action Approval of Conversion Application

Date: November 27, 1985.

Notice is hereby given that on October 4, 1985, the Office General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Brookfield Federal Savings and Loan Association, Brookfield, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Chicago, Illinois, 60601.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-28983 Filed 12-5-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-461]

Capital Federal Savings and Loan Association, Sacremento, CA; Final Action Approval of Conversion Application

Date: November 27, 1985.

Notice is hereby given that on October 4, 1985 the Office General Counsel of the Federal Home Bank Board, acting pursuant to the authority deleted to the General Counsel or his designee, approved the application of Capital Federal Savings and Loan Association, Sacramento, California, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretriat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of San Francisco, Post Office Box 7948, San Francisco, California 94120.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

[FR Doc. 85-28984 Filed 12-5-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-451]

Century Federal Savings and Loan Association, Santa Fe, NM; Final Action, Approval of Conversion Application

Date: November 27, 1985.

Notice is hereby given that on August 2, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Century Federal Savings and Loan Association, Santa Fe, New Mexico for permission to convert to the stock form of organziation. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Dallas, 500 E. John Carpenter Freeway, P.O. Box 619026, Dallas/Fort Worth, Texas 75261-9026.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-28985 Filed 12-5-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-453]

Coast Savings and Loan Association, Los Angeles, CA; Final Action, Approval of Conversion Application,

Date: November 27, 1985.

Notice is hereby given that on November 18, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Coast Savings and Loan Association, Los Angeles, California, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of San Francisco, Post Office Box 7948, San Francisco, California 92120.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-28986 Filed 12-5-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-449]

The Conservative Savings and Loan Association, Omaha, NE; Final Action Approval of Conversion Application

Date: November 27, 1985.

Notice is hereby given that on August 16, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of The Conservative Savings and Loan Association, Omaha, Nebraska, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Topeka, Post Box 176, Topeka, Kansas 6601.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-28987 Filed 12-5-85; 8:45 am]

BILLING CODE 6720-01-M

[No. 85-1093]

Downey Savings and Loan Association Costa Mesa, CA; Approval of Application To Withdraw Securities From Listing and Registration on the American Stock Exchange

Date: November 27, 1985.

Notice is hereby given that on November 15, 1985, the General Counsel approved pursuant to delegated authority, the application filed on September 10, 1985, by Downey Savings and Loan Association (the "Association") pursuant to Securities Exchange Act ("Exchange Act") section 12(d) and Exchange Act Rule 12d2-2(d), to withdraw from listing and registration on the American Stock Exchange (the "Exchange") its Common Stock. Notice of this application was published in the **Federal Register** on October 31, 1985 and open for comment from the public until November 15, 1985. As noted in the earlier notice, the common stock of the Association will continue to be registered under the Exchange Act and is also listed and registered on the New York Stock Exchange. Copies of the application are available for inspection at the Public Information Services Section Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-28988 Filed 12-5-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-452]

First Federal Savings and Loan Association of Danville, Danville, VA; Final Action, Approval of Conversion Application

Date: November 27, 1985.

Notice is hereby given that on May 14, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Danville, Danville, Virginia for permission to convert First Federal to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, 260 Peachtree Street, N.W., Atlanta, Georgia 30303.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-28989 Filed 12-5-85; 8:45 am]

BILLING CODE 6720-01-M

[No AC-448]

First Federal Savings and Loan Association of De Kalb County, Fort Payne, AL; Final Action, Approval of Conversion Application

Date: November 27, 1985.

Notice is hereby given that on August 14, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of De Kalb County, Fort Payne, Alabama, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-28990 Filed 12-5-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-444]

Heart Federal Savings and Loan Association, Auburn, CA; Final Action, Approval of Conversion Application

Dated: Nobember 27, 1985.

Notice is hereby given that on October 4, 1985, the Office General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Heart Federal Savings and Loan Association, Auburn, California, for permission to covert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of San Francisco, Post Office Box 7948, San Francisco, California 94120.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-28991 Filed 12-5-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-446]

Home Bank, FSB, Berlin, NH; Final Action, Approval of Conversion Application

Dated: November 27, 1985.

Notice is hereby given that on August 8, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Bank, FSB, Berlin, New Hampshire, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Boston, Post Office Box 2196, Boston, Massachusetts 02106.

By the Federal Home Loan Bank Board.
Nadine Y. Penn,
Acting Secretary.
[FR Doc. 85-28992 Filed 12-5-85; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-459]

Metropolitan Federal Savings and Loan Association, Nashville, TN; Final Action, Approval of Conversion Application

Dated: November 27, 1985.

Notice is hereby given that on August 8, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Metropolitan Federal Savings and Loan Association, Nashville, Tennessee, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Cincinnati, Post Office Box 598, Cincinnati, Ohio 45201.

By the Federal Home Loan Bank Board.
Nadine Y. Penn,
Acting Secretary.
[FR Doc. 85-28993 Filed 12-5-85; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-456]

Mid-America Federal Savings and Loan Association, Parson, KS; Final Action, Approval of Conversion Application

Dated: November 27, 1985.

Notice is hereby given that on November 11, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Mid-America Federal Savings and Loan Association, Parson, Kansas, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank Topeka, Post Office Box 176, Topeka, Kansas 66601.

By the Federal Home Loan Bank Board.
Nadine Y. Penn,
Acting Secretary.
[FR Doc. 85-28994 Filed 12-5-85; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-450]

North American Savings Association, Grandview, MO; Final Action, Approval of Conversion Application

Dated: November 27, 1985.

Notice is hereby given that on August 2, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of North American Savings Association, Grandview, Missouri, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Des Moines, 907 Walnut Street, Des Moines, Iowa 50309.

By the Federal Home Loan Bank Board.
Nadine Y. Penn,
Acting Secretary.
[FR Doc. 85-28995 Filed 12-5-85; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-457]

Palemetto Federal Savings and Loan Association, Aiken, SC; Final Action, Approval of Conversion Application

Dated: November 27, 1985.

Notice is hereby given that on November 6, 1985, the Office General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Palmetto Federal Savings and Loan Association, Aiken, South Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.
Nadine Y. Penn,
Acting Secretary.
[FR Doc. 85-28996 Filed 12-5-85; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-454]

Piedmont Federal Savings and Loan Association, Manassas, VA; Final Action, Approval of Conversion Application

Date: November 27, 1985.

Notice is hereby given that on November 13, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Piedmont Federal Savings and Loan Association, Manassas, Virginia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.
Nadine Y. Penn,
Acting Secretary.
[FR Doc. 85-28997 Filed 12-5-85; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-458]

Poughkeepsie Savings Bank, FSB, Poughkeepsie, NY; Final Action, Approval of Conversion Application

Date: November 27, 1985.

Notice is hereby given that on October 11, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the amended application of Poughkeepsie Savings Bank, FSB, Poughkeepsie, New York, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.
Nadine Y. Penn,
Acting Secretary.
[FR Doc. 85-28998 Filed 12-5-85; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-447]

Security Federal Savings and Loan Association of South Miami, FL; Final Action, Approval of Conversion Application

Date: November 27, 1985.

Notice is hereby given that on August 9, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Security Federal Savings and Loan Association of South Miami, South Miami, Florida, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Atlanta, Geogia 30343.

By the Federal Home Loan Bank Board.
Nadine Y. Penn,
Acting Secretary.
[FR Doc. 85-28999 Filed 12-5-85; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Automated Tariff Filing and Information System (ATFI) Notice of Advisory Committee Meeting

AGENCY: Federal Maritime Commission.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Commission announces the first meeting of the ATFI Advisory Committee to be held on January 23–24, 1986 in Washington, DC. The agenda for the first meeting includes opening remarks by FMC Chairman Edward V. Hickey Jr., and an open forum discussion of a feasibility study proposed by a GSA contractor. The meeting will be open to the public.

DATE: The ATFI Advisory Committee meeting will commence on January 23, 1986 at 9:00 a.m. and, if necessary, will continue through January 24, 1986.

ADDRESS: The ATFI Advisory Committee meeting will be held at 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:
Committee Executive Secretary
John Robert Ewers, Director, Office of Regulatory Overview, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5866.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission Automated Tariff Filing and Information System (ATFI) Advisory Committee will meet at 9:00 a.m. on January 23, 1986 in the Main Hearing Room at the Commission Headquarters Building, 1100 L Street, NW., Washington, DC.

The Advisory Committee was established in November of 1985 (50 FR 47447) to advise the Commission on the study, development and operation of an automated tariff filing system. The Committee consists of 20 members including one agency official and a balanced representation of conferences, ocean common carriers, non-vessel-operating common carriers, ocean freight forwarders, shippers, shipper's associations, ports and transportation support firms.

The agenda for the meeting is:

1. Opening statement of guidelines for Committee operations by FMC Chairman Edward V. Hickey, Jr.

2. Committee organization and determination of work objectives and attainment dates.

3. Discussion of ATFI Feasibility Study contract objectives and methodology: user needs and demands (with possible recommendations to Commission).

The meeting will be open to public observation. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each. More extensive questions or comments should be submitted in writing before January 20, 1986. Other public statements regarding committee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public (including 5 seats reserved for media representatives) on a first-come-first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

Inquiries may be addressed to the Committee Executive Secretary, Mr. John Robert Ewers, Director, Office of Regulatory Overview, Room 12211, 1100 L Street, NW., Washington, DC 20573.

By the Commission.
Bruce A. Dombrowski,
Acting Secretary.
[FR Doc. 85-29004 Filed 12-5-85; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation; Information Collection Activities Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Office of Federal Acquisition and Regulatory Policy, 202-523-5168.

SUPPLEMENTARY INFORMATION: a. Purpose: The termination settlement proposal forms (Standard Forms 1435 through 1440) provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiation position. Submission of the information assures that a contractor will be fairly reimbursed upon settlement of the terminated contract.

b. Annual reporting burden: The annual reporting burden is estimated as follows: Respondents, 600; responses per respondent 1; total annual responses, 600; hours per response, 2.5; and total reporting hours, 1500.

Obtaining Copies of Proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GS Building, Washington, DC 20405, telephone 202-523-4755. Please cite OMB Control No. 9000-0012, Termination Settlement Proposal Forms.

Dated: December 3, 1985.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 85-29035 Filed 12-5-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85E-0444]

Determination of Regulatory Review Period for Purposes of Patent Extension; Fortaz

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Fortaz and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims this human drug product.

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

FOR FURTHER INFORMATION CONTACT: Michael W. Cogan, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension and applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Fortaz, ceftazidime for injection, indicated for the treatment of patients with infections caused by susceptible strains of designated organisms. Based on this approval, the owner of U.S. Patent No. 4,258,041, Glaxo Group Limited, is seeking patent term restoration.

FDA has determined that the applicable regulatory review period for Fortaz is 1,648 days. Of this time, 856 days occurred during the testing phase of the regulatory review period, while 792 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 507(d) of the Federal Food, Drug, and Cosmetic Act became effective:* January 15, 1981. The applicant correctly states that the testing phase began on January 15, 1981, the date an application for an investigational exemption became effective (30 days after its receipt by the agency; see 21 CFR 312.1, 433.17).

2. *The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act:* May 20, 1983. The applicant correctly states that the approval phase began on May 20, 1983, the date on which the appicant initially submitted a Form 5 application.

3. *The date the application was approved:* July 19, 1985. FDA has verified that the Form 5 application (NDA 50-578) was approved on July 19, 1985, as stated by the applicant.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 482 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 4, 1986, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 4, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review preiod. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petition should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the document number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 27, 1985.

Allen B. Duncan,

Deputy Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-28927 Filed 12-5-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85E-0472]

Determination of Regulatory Review Period for Purposes of Patent Extension; Hexabrix Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Hexabrix injection and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug

product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulaory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Hexabrix injection, an injectable form of ioxaglate meglumine and ioxaglate sodium, which is indicated for use in cerebral angiography, peripheral arteriography, selective visceral arteriography, and selective coronary arteriography with or without left ventriculography. Based on this approval, Guerbet, S.A., now seeks patent term restoration.

FDA has determined that the applicable regulatory review period for Hexabrix injection is 1,981 days. Of this time, 1,000 days occurred during the testing phase of the regulatory review period, while 981 days occurred during the approval phase. These periods of time were derived form the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Costmetic Act became effective:* February 24, 1980. The applicant claims February 29, 1980, as the date which commenced the testing phase. FDA, however, received the notice of claimed investigational exemption (IND) on January 25, 1980. Under FDA regulations, 21 CFR 312.1(b)(4), the IND became effective 30 days after it was received by the agency. The effective date, therefore, was February 24, 1980.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* November 19, 1982. The applicant claims that the new drug application for the drug (NDA 18-905) was filed on November 18, 1982. However, FDA did not receive the application until November 19, 1982.

3. *The date the application was approved:* July 26, 1985. FDA verified that NDA 18-905 was approved on July 26, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 4, 1983, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 4, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the document number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 27, 1985.

Allen B. Duncan,

Deputy Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-28925 Filed 12-5-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85M-0409]

Hydracon Corp., Premarket Approval of HYDRACON® (Methafilcon A) Hydrophilic Contact Lenses

Correction

In FR Doc. 85-27473, appearing on page 47629 in the issues of Tuesday, November 19, 1985, make the following correction: In the first column, in the **FOR FURTHER INFORMATION CONTACT** paragraph, first line, "Lipman" should read "Lippman".

BILLING CODE 1505-01-M

National Institutes of Health

Recombinant DNA Advisory Committee, Working Group on Human Gene Therapy; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee Working Group on Human Gene Therapy at the National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, on December 16, 1985, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. to discuss scientific issues and procedures for review of proposals involving human gene therapy. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee Working Group on Human Gene Therapy, National Institutes of Health, Building 31, Room 3B10, Bethesda, Maryland 20892, telephone (301) 496-6051.

Dated: December 2, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

[FR Doc. 85-29083 Filed 12-5-85; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-85-1571]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management of Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Community Development Block Grant Affirmatively Furthering Study
Office: Policy Development and Research
Form No.: None
Frequency of submission: On Occasion
Affected public: State or Local Governments
Estimated burden hours: 50
Status: New
Contact: Judson L. James, HUD, (202) 755-4370. Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 5, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 85-28968 Filed 12-5-85; 8:45 am]

BILLING CODE 4210-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 278X)]

Burlington Northern Railroad Co.; Abandonment Exemption in Whatcom County, WA; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 3.34-mile line of railroad between milepost 19.30 near Hampton Jct. and milepost 15.96 near Strandell, WA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic 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 January 5, 1986 (unless stayed pending reconsideration). Petitions to stay must be filed by December 16, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 26, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

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 26, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-28956 Filed 12-5-85; 8:45 am]

BILLING CODE 7035-01-M

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: December 3, 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, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Agway Inc.

(2) P.O. Box 4933, Syracuse, NY 13221.
(3) Lawrence F. Barnett, Mgr. Traffic/Transportation.
(4) P.O. Box 4853, Syracuse, NY 13221.

James H. Bayne,

Secretary.

[FR Doc. 85-28958 Filed 12-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19; Sub-No. 109X]

Railroads; Dayton and Michigan Railroad Co. and the Baltimore and Ohio Railroad Co; Abandonment and Discontinuance of Service in Lucas County, OH; Exemption

Applicants have filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to discontinue service and abandon a portion of The Baltimore and Ohio Railroad Company's Toledo Terminal Subdivision extending from railroad milepost 199.59 at Rossford Yard to end of line at railroad milepost 200.61, a distance of approximately 1.02 miles, located at or near Toledo, Lucas County, OH.

Applicants have 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 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 January 5, 1986 (unless stayed pending reconsideration). Petitions to stay must be filed by December 16, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 26, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicants' representatives:

Rene J. Gunning, Suite 2204, 100 North Charles Street, Baltimore, MD 21201
Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44101

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 26, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-28957 Filed 12-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30747]

Consolidated Rail Corp. Trackage Rights; the Pocono Northeast Railway, Inc.; Exemption

The Pocono Northeast Railway, Inc. (PNE) has agreed to grant local trackage rights to Consolidated Rail Corporation (Conrail) over approximately 1,100 feet of PNE track beginning at the connection of Conrail's Shimer Running Track with the tract of PNE at milepost 148.3, York Junction, PA, to the connection of PNE's track with the Beaver Brook Colliery Branch. The trackage right are effective on November 25, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: November 26, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-28954 Filed 12-5-85; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Griffis Inc., 6641 103rd St., Jacksonville, Florida 32210.

2. Wholly-owned subsidiaries which will participate in the operations, and State of Incorporation:

(i) Griffis Gas Co, Inc. Florida
(ii) Griffis Gas of Gainesville, Inc. Florida
(iii) Griffis Gas of Starke, Florida
(iv) U.S. Propane, Inc. Florida

1. Parent Corporation—Household Merchandising, Inc., 1700 S. Wolf Road, Des Plaines, Illinois 60018.

2. Wholly-owned subsidiaries of Household Merchandising, Inc. which will participate in the operations, and the addresses of their respective principal officers:

A. Household Merchandising, Inc. (Ohio), Ben Franklin Division, (Ben Franklin Stores), 1700 S. Wolf Road, Des Plaines, Illinois 60018
B. Coast-to-Coast Stores (Central, Organization), Incorporated (Delaware), 10801 Red Circle Drive, Minnetonka, Minnesota 55343
C. Coast-to-Coast Stores, Inc. (Delaware), 10801 Red Circle Drive, Minnetonka, Minnesota 55343
D. Total Hardware, Inc. (Delaware), 10801 Red Circle Drive, Minnetonka, Minnesota 55343
E. Twenty One—Fifty Olympic, Inc. (Oregon), 10801 Red Circle Drive Minnetonka, Minnesota 55343
F. T. D. S. Transportation, Inc. (Delaware), 1700 S. Wolf Road, Des Plaines, Illinois 60018
G. T. G. & Y. Stores Co. (Delaware), 3815 North Santa Fe, Oklahoma City, Oklahoma 73125
H. Central Sales Promotions, Inc. (Oklahoma), 130 N. E. 50th Street, Oklahoma City, Oklahoma 73125
I. Household Merchandising Overseas, Inc. (Delaware), 1700 S. Wolf Road, Des Plaines, Illinois 60018
J. T. D. S. Brokerage, Inc. (Delaware), 1700 S. Wolf Road, Des Plaines, Illinois 60018
K. Gosselin Stores Co., Inc. (Kansas), 1700 S. Wolf Road, Des Plaines, Illinois 60018
L. Crest Stores Company (North Carolina), 1700 S. Wolf Road, Des Plaines, Illinois 60018
M. Vons Grocery Co. (Delaware), 10150 Lower Azusa Road, El Monte, California 91731
N. Foods, Incorporated (California), 10150 Lower Azuas Road, El Monte, California 91731
O. Expo Stores, Inc. (California), 10150 Lower Azusa Road, El Monte, California 91731

1. Parent corporation and address of principal office: PLM Railcar Maintenance Company, 655 Montogmery Street, San Francisco, California 94111.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation: CPK Express, Inc., a Nebraska corporation.

1. Parent holding corporation and address of principal office: Security

Holdings, Ltd., Suite 475, 35 Glenlake Parkway, Atlanta, GA 30328

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(1) Security Lawn & Garden Products Company, Geogia corporation,

(2) Security Transport Co., Georgia corporation,

(3) Vansant & Law Incorporated, Georgia corporation.

James H. Bayne,

Secretary.

[FR Doc. 85-28955 Filed 12-5-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Attorney General's Commission on Pornography; Meetings and Hearings

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Department of Justice announces the following meetings and hearings of the Attorney General's Commission on Pornography.

Hearing

Date and Time: January 21, 1986, 8:30 a.m.-7:00 p.m.

Place: Main Courtroom, U.S. Court of International Trade, 1 Federal Plaza, New York, NY 10007.

Status: Open to the public.

Matters to be considered at hearing:

Testimony of witnesses and examination by Commissioners.

Hearing

Date and Time: January 22, 1986, 8:30 a.m.-7:00 p.m.

Place: Main Courtroom, U.S. Court of International Trade, 1 Federal Plaza, New York, NY 10007.

Status: Open to the public.

Matters to be considered at hearing:

Testimony of witnesses and examination by Commissioners.

Meeting

Date and Time: January 23, 1986, 9:00 a.m.-6:00 p.m.

Place: Room 305C, Federal Courtroom, 26 Federal Plaza, New York, NY 10007.

Status: Open to the public.

Matters to be considered at meeting:

Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevant matters.

Meeting

Date and Time: January 24, 1986, 9:00 a.m.-5:00 p.m.

Place: Room 305C, Federal Courtroom, 26 Federal Plaza, New York, NY 10007.

Status: Open to the public.

Matters to be considered at meeting:

Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevant matters.

The meetings and hearings will be open to the public, and written comments may be submitted regarding relevant issues. Approximately 200 seats will be available at the public hearings and approximately 50 seats will be available at the public meetings all on a first come, first served basis. Approximately 50 seats at hearings and 20 seats at meetings will be reserved for press.

Copies of minutes will be available upon request, at the actual cost of duplication, 60 days after the final hearing on January 22, 1986.

Contact person for more information: Alan E. Sears, Executive Director, Attorney General's Commission on Pornography, Department of Justice, Room 1018, HOLC Building, 320 First Street NW., Washington, DC 20530, (202) 724-7837.

Henry Hudson,

Commission Chairman.

[FR Doc. 85-29002 Filed 12-5-85; 8:45 am]

BILLING CODE 4410-01-M

Pollution Control; Consent Judgment; Lodging of Stipulation on Requisite Remedial Technology Program Pursuant to Provisions of 1982 Settlement Agreement Negotiated Pursuant to Resource Conservation and Recovery Act, et al.; Hooker Chemicals and Plastics Corp. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 26, 1985 a proposed Agreement and Stipulation on Requisite Remedial Technology Program in *United States and the State of New York* v. *Hooker Chemicals & Plastics Corp. et al.* (*Hyde Park Landfill*), Civil Action No. 79-989(C) was lodged with the United States District Court for the Western District of New York. The proposed Stipulation on Requisite Remedial Technology Program concerns measures to be taken to remediate the migration of chemicals from Hooker Chemicals & Plastics Corp.'s (now Occidential Chemical Corporation's) Hyde Park Landfill, located in the Town of Niagara, New York. The Stipulation on Requisite Remedial Technology Program requires the defendant to do, among other things, the following:

(a) Undertake a prototype source control program;

(b) Install an overburden tile drain system to remediate aqueous and non-aqueous phase contaminants in the overburden;

(c) Implement an industrial protection program for workers in neighboring industries;

(d) Operate a prototype purge well system to contain non-aqueous phase contaminants in the bedrock;

(e) Develop and operate final remedial systems from prototype systems

(f) Operate a system to collect aqueous phase contaminants in a portion of the bedrock;

(g) Monitor to determine whether further action must be taken;

(h) Conduct further surveys to track the spread, if any, of chemicals to low bedrock formations;

(i) Implement a clean-up of the Niagara River Gorge Face in the vicinity of the Landfill;

(j) Undertake a Residential Community Monitoring Program;

(k) And conduct a study (jointly with the United States, the State of New York and other interested parties) concerning bioaccumulation of 2,3,7,8-tetrachlorodibenzo-p-dioxin in Niagara River and Lake Ontario fish.

The Stipulation modifies provisions of the original Settlement Agreement entered by the District Court in 1982, including aspects of the Environmental Health and Safety Plan contained in Addendum V of the Settlement Agreement.

The Department of Justice will receive for a period of forty-five days from the date of this publication comments relating to the proposed Stipulation on Requisite Remedial Technology Program. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 10530, and should refer to *United States* v. *Hooker Chemicals & Plastics Corp.* ((*Hyde Park Landfill*), DJ Ref. 90-7-40.

The proposed Stipulation on Requisite Remedial Technology Program may be examined at the offices of the United States Attorney, 502 United States Courthouse, Court and Franklin Streets, Buffalo, New York 14202, at the Region II Office of the Environmental Protection Agency, 28 Federal Plaza, New York, New York 10278, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. Copies will also be made available in person, or by mail, to interested parties at, or by request from EPA's Public Information Office, Carborundum Center, Suite 530, 345 Third Street, Niagara Falls New York 14303. A copy of the proposed Stipulation may be obtained in person

or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Abicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-28932 Filed 12-5-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recrdkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Service Delivery Area Reorganization Plan Appeals
1205- ; ETA RC 85
On occasion
State or local governments
20 respondents; 40 hours; no forms

The information collected will be used to determine whether JTPA recipients denial of a reorganization plan for a service delivery area is in conformance with the JTPA.

Extension

Bureau of Labor Statistics
Occupational Wage Survey Program
1200-0007 BLS 2751A, BLS 2752A, BLS 2752B, BLS 2753F, BLS 2753G, 552
Annually
State or local governments; business or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations
28,600 responses; 77,380 hours; 6 forms

Occupational wage survey data serve a variety of uses, including wage administration, negotiations, mediation, plant location decisions, and general economic analysis. The data are also used in the administration of the Federal Pay Comparability Act of 1970; the Service Contract Act of 1965; and the Social Security Act.

Employment and Training Administration
Income and Eligibility Verification
1205-0238
On occasion
State or local governments
Respondent varies; 44,880 hours

Final rules implementing the income and eligibility verification provision in the Deficit Reduction Act. Rules apply to State Employment Security Agencies (SESA's) and require them to disclose and obtain certain information for verifying eligibility and benefit amounts.

UI Random Audit
1205-0218
Monthly; Quarterly
State or local governments
52 respondents; 179,712 hours; no forms

Audit a sample of individual unemployment insurance benefit payments to assure they were made properly and to assess operating effectiveness of State agencies. The program will reduce errors, save money, and assure benefit payment integrety.

Internal Fraud Activities
1205-0187
Semi-annually
State or local governments
Respondents 53; 2,544 hours; 1 form (ETA 9000)

Internal security is among the top priorities in the area of payment control. The form ETA 9000 will help SESA's in assessing the adequacy of their internal security controls and will provide important data for UIS in developing budget information.

Signed at Washington, DC, this 3rd day of December, 1985.

Harry Echols,

Acting Departmental Clearance Officer.

[FR Doc. 85-29029 Filed 12-5-85; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Indiana State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On March 6, 1974, notice was published in the **Federal Register** (39 FR 8611) of the approval of the Indiana plan and the adoption of Subpart Z to Part 1952 containing the decision.

The Indiana plan provides for the adoption of Federal standards as State standards after public hearing. By letter dated August 1, 1984, from the

Commissioner, Indiana Division of Labor, to the Regional Administrator, Occupational Safety and Health Administration, and incorporated as part of the plan, the State submitted State standards amendments which are the same as the following Federal standards amendments: 29 CFR 1910.422, "Commercial Diving Operations," as published in the **Federal Register** (49 FR 881) dated January 6, 1984; 29 CFR Part 1910, "Revocation of Advisory and Repetitive Standards," as published in the **Federal Register** (49 FR 5318) dated February 10, 1984; and 29 CFR 1910.177, "Servicing of Single and Multi-piece Rim Wheels," as published in the **Federal Register** (49 FR 4338) dated February 3, 1984. These amendments, which are contained in the Indiana Administrative Code, were promulgated after public comment was requested on March 12, 1984, by a notice in a newspaper of general circulation within the State. A public hearing was held on June 1, 1984, at which time the amendments were adopted. The Governor approved it on July 18, 1984, it was filed with the Secretary of State on July 25, 1984, and it was registered with the Legislative Council on July 25, 1984, pursuant to the Indiana Administrative Adjudication Act.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and are therefore approved.

3. Location of supplement for inspection and copying

A copy of the Indiana standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 230 South Dearborn Street, Chicago, Illinois 60604; State of Indiana, Division of Labor, 1013 State Office Building, Indianapolis, Indiana 46204; and the Directorate of Federal-State Operations, Occupational Safety and Health Administration, Room N3700, 200 Constitution Ave., NW., Washington DC 20210.

4. Public participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Asssitant Secretary finds that good cause exists for not publishing the supplement to the Indiana State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. These standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of the State law and further participation would be unnecessary.

This decision is effective July 23, 1985.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Chicago, Illinois, on this 23d day of July 1985.

Frank L. Strasheim,

Regional Administrator.

[FR Doc. 85-29030 Filed 12-5-85; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-529, and STN 50-530]

Arizona Public Service Co. et al. (Palo Verde Nuclear Generating Station, Units 2 and 3); Exemption

I

On July 11, 1974, the Arizona Public Service Company, the Salt River Project Agricultural Improvement and Power District, the El Paso Electric Company, the Public Service Company of New Mexico, and the Arizona Electric Power Cooperative, Incorporated (the applicants) tendered an application for licenses to construct the Palo Verde Nuclear Generating Station, Units 1, 2 and 3 (Palo Verde or the facility) with the Atomic Energy Commission (currently the Nuclear Regulatory Commission or the Commission). Following a public hearing before the Atomic Safety and Licensing Board, the Commission issued Construction Permit Nos. CPPR-141, CPPR-142 and CPPR-143 on May 25, 1976, permitting the construction of Units 1, 2 and 3, respectively. Each unit of the facility is a pressurized water reactor, containing a Combustion Engineering Company (CE) nuclear steam supply system which is a standard plant design referred to as CESSAR System 80 (CESSAR). The facility is located at the applicants' site in Maricopa County, Arizona.

On April 1978, the construction permits for Palo Verde, Units 1, 2 and 3 were amended to delete the Arizona Electric Power Cooperative, Incorporated, as a co-owner to the facility. On October 1, 1979, the applicants tendered an application for Operating Licenses for each unit of the facility. On April 28, 1982, the construction permits for the three units were further amended to include the Southern California Public Power Authority and the Los Angeles Department of Water and Power as co-owners to the facility (the Los Angeles Department of Water and Power will actually become a co-owner at the time that Palo Verde Unit 1 achieves commercial operation). On December 31, 1984 and June 1, 1985, Palo Verde Unit 1 was issued a low power license and a full power license, respectively. Palo Verde Units 2 and 3 are currently in the licensing review process.

II

The Construction Permits issued for constructing the facility provide, in pertinent part, that the facility units are subject to all rules, regulations and Orders of the Commission. This includes General Design Criterion (GDC) 4 of Appendix A to 10 CFR Part 50. GDC 4 requires that structures, systems and components important to safety shall be designed to accommodate the effects of, and to be compatible with, the environmental conditions associated with the normal operation, maintenance, testing and postulated accidents, including loss-of-coolant accidents. These structures, systems and components shall be appropriately protected against dynamic effects, including the effects of missiles, pipe whipping, discharging fluids that may result from equipment failures, and from events and conditions outside the nuclear power unit. The protective measures include physical isolation from postulated pipe rupture locations, if feasible, or the installation of pipe whip restraints, jet impingement shields or compartments.

By letter dated June 7, 1984 (Reference 1) the applicants requested a lifetime partial exemption from GDC 4 by seeking authorization to not include pipe whip restraints and jet impingement shields on the Reactor Coolant Systems (RCS) main loop piping. This request was amended by the applicants in a letter dated July 16, 1985 (Reference 2) to a schedular partial exemption from GDC 4 for a period ending with the completion of the second refueling outrage of each unit. By letter dated December 10, 1984, the applicants submitted an application for amendments of Construction Permits CPPR-142 and CPPR-143 for Palo Verde Units 2 and 3 (Reference 3). In support of

the application, the applicants reference two documents: a report submitted by CE by letter dated June 14, 1983 (Reference 4) and an amendment to the CE report submitted by letter dated December 23, 1983 (Reference 5). The technical information contained in these two documents together with the value-impact analysis submitted by letter dated October 3, 1984 (Reference 6) provided a comprehensive justification for requesting a partial exemption from the requirements of GDC 4.

The CE submittals (References 4 and 5) contain the technical bases to demonstrate that, for CESSAR plants, guillotine type failures of the RCS main loop piping need not be considered in the design basis and hence, pipe whip restraints and jet impingement shields for the RCS piping are not required. The submittals were made to support requests, by applicants with a CESSAR plant, for an exemption to GDC 4 as it relates to all postulated large pipe breaks specified in Section 3.6 of CESSAR-F, pipe whip restraints and jet impingement shields on the RCS primary piping and associated dynamic effects. No other changes in design requirements are addressed within the scope of the referenced reports; e.g., no changes to the definition of a LOCA nor its relationship to the regulations addressing design requirements of ECCS (10 CFR 50.46), containment (GDC 16, 50), other engineered safety features and the conditions for environmental qualification of equipment (10 CFR 50.49). The applicant's exemption request (References 1 and 2) also states that no other changes in design requirements are being requested.

III

The technical bases provided by CE for the exemption request (References 4 and 5) relied on advanced fracture mechanics technology. These advanced fracture mechanics techniques, which make possible the acceptance of the technical bases, deal with relative small flaws in piping components (either postulated or real) and examine their behavior under various pipe loads. The objective is to demonstrate by deterministic analyses that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before the flaws can grow to critical or unstable sizes which could lead to large break areas such as the double-ended guillotine break (DEGB) or its equivalent. The concept underlying such analyses is referred to as "leak-before-break" (LBB). There is no implication that piping failures cannot occur, but rather that improved knowledge of the failure modes of piping systems and the application of appropriate remedial measures, if indicated, can reduce the probability of catastrophic failure to insignificant values.

Advanced fracture mechanics technology was also applied to Westinghouse topical reports (References 7, 8, and 9) submitted to the staff on behalf of the licensees belonging to the Owners Group for Unresolved Safety Issue (USI) A-2, "Asymmetric Blowdown Loads on PWR Primary Systems". Although the topical reports were intended to resolve the issue of asymmetric blowdown loads that resulted from a limited number of discrete break locations, the technology advanced in these topical reports demonstrated that the probability of breaks occurring in the primary coolant system main loop piping is sufficiently low such that these breaks need not be considered as a design basis for requiring installation of pipe whip restraints or jet impingement shields. The staff's evaluation of these Westinghouse reports is attached as Enclosure 1 to Reference 10.

Proabilistic fracture mechanics studies conducted by the Lawrence Livermore National Laboratories (LLNL) on both Westinghouse and Combustion Engineering nuclear steam supply main loop piping (Reference 11) confirm that both the probability of leakage (e.g., undetected flaw growth through the pipe wall by fatigue) and the probability of a DEGB are very low. The results given in Reference 9 are that the best-estimate leak probabilities for Westinghouse nuclear steam supply system main loop piping range from 1.2×10^{-8} to 1.5×10^{-7} per plant year and the best estimate DEGFB probabilities range from 1×10^{-12} to 7×10^{-12} per plant year. Similarly, the best-estimate leak probabilities for Combustion Engineering nuclear steam supply system main loop piping range from 1×10^{-8} to 3×10^{-8} per plant year, and the best-estimate DEGB probabilities range from 5×10^{-14} to $\times10^{-13}$ per plant year. These results do no affect core melt probabilities in any significant way.

During the past few years it has also become apparent that the requirement for installation of large, massive pipe whip restraints and jet impingement shields is not necessarily the most cost effective way to achieve the desired level of safety, as indicated in Enclosure 2 to Reference 10. Even for new plants, these devices tend to restrict access for future inservice inspection of piping; or if they are removed and reinstalled for inspection, there is a potential risk of damaging the piping and other safety-related components in this process. If installed in operating plants, high occupational radiation exposure (ORE) would be incurred while public risk reduction would be very low. Removal and reinstallation for inservice inspection also entail significant ORE over the life of a plant.

IV

The primary collant system of CESSAR facilities, as described in References 4 and 5, has two (2) main loops each comprising a 42-inch diameter hot leg and two (2) 30-inch diameter crossover legs and cold legs. The materials in the primary loop piping are SA 516 Gr 70 (pipes) and SA 508 CL 1, 2 or 3 (safe ends and nozzles). The piping system is cladded on the inside surface with stainless steel. In its review of References 4 and 5, the staff evaluated the CE analyses with regard to:

—The location of maximum stresses in the piping, associated with the combined loads for norml operation and the SSE;
—Potential cracking mechanisms;
—Size of throughwall cracks that would leak a detectable amount under normal loads and pressure;
—Stability of a "leakage-size-crack" under normal plus SSE loads and the expected margin in terms of load;
—Margin based on crack size; and
—The fracture toughness properties of carbon steel piping and weld material.

The NRC staff's criteria for evaluation of the above parameters are delineated in Enclosure 1 to Reference 10, Section 4.1, "NRC Evaluation Criteria," and are as follows:

(1) The loading conditions should include the static forces and moments (pressure, deadweight and thermal expansion) due to normal operations, and the forces and moments associated with the safe shutdown earthquake (SSE). These forces and moments should be located where the highest stresses, coincident with the poorest material properties, are induced for base materials, weldments and safe-ends.

(2) For the piping run/systems under evaluation, all pertinent information which demonstrates that degradation of failure of the piping resulting from stress corrosion cracking, fatigue or water hammer is not likely, should be provided. Relevant operating history should be cited, which includes systems operational procedures; system or component modification; water chemistry parameters, limits and controls; resistance of material to

various forms of stress corrosion, and performance under cyclic loadings.

(3) A throughwall crack should be postulated at the highest stressed locations determined from (1) above. The size of the crack should be large enough so that the leakage is assured of detection with adequate margin using the minimum installed leak detection capability when the pipe is subjected to normal operational loads.

(4) It should be demonstrated that the postulated leakage-size crack is stable under normal plus SSE loads for long periods of time; that is, crack growth, if any, is minimal during an earthquake. The margin, in terms of applied loads, should be determined by a crack stability analysis; i.e., that the leakage-size crack will not experience unstable crack growth even if larger laods (larger than design loads) are applied. This analysis should demonstrate that crack growth is stable and that the final crack size is limited, such that a double-ended pipe break will not occur.

(5) The crack size margin should be determined by comparing the leakage-size crack to critical-size cracks. Under normal plus SSE loads, it should be demonstrated that there is adequate margin between the leakage-size crack and the critical-size crack to account for the uncertainties inherent in the analyses and in the leakage detection capability. A limitload analysis may suffice for this purpose; however, an elastic-plastic fracture mechanics (tearing instability) analysis is perferable.

(6) The materials data provided should include types of materials and materials specifications used for base metal, weldments and safe-ends, the materials properties including the J–R curve used in the analyses, and long-term effects such as thermal aging and other limitations to valid data (e.g., J maximum, maximum crack growth).

V

The staff's evaluation of the analysis contained in the CE submittals (References 4 and 5), is presented in Reference 12. Based on that evaluation, the staff finds that CE has presented an acceptble technical justification, addressing the above criteria, for not installing protective devices to deal with the dynamic effects of large pipe ruptures in the main loop primary coolant system piping of CESSAR facilities. As stated in Reference 12, this finding is based on the following observations:

(1) The loads associated with the highest stressed locations in the main loop primary system piping were provided and are within Code allowables.

(2) For CE plants, there is no history of cracking failure in reactor primary coolant system loop piping. CE reactor coolant system primary loops have an operating history which demonstrates their inherent stability. This includes a low susceptibility to cracking failure from the effects of corrosion (e.g., intergranular stress corrosion cracking), water hammer, or fatigue (low and high cycle). This operating history includes sereral plants with many years of operation.

(3) The results of the leak rate caluclations performed for CESSAR used initial postulated throughwall flaws that are equivalent in size to that in Enclosure 1 to Reference 10. CESSAR facilities are expected to have an RCS pressure boundary leak detection system which is consistent with the guidelines of Regulatory Guide 1.45 so that they can detect leakage of one (1) gpm in one hour. This will be verified during the case-by-case review of each applicant's submittal. The caluclated leak rate through the postulated flaw is large relative to the staff's required sensitivity of plant leak detection systems. The margin is at least a factor of ten (10) on leakage.

(4) The expected margin in terms of load for the leakage-size crack under normal plus SSE loads is greater than a factor of three (3) when compared to the limit load. In addition, the staff found a significant margin in terms of loads larger than normal plus SSE loads.

(5) The margin between the leakage-size crack and the critical-size crack was calculated. Again, the results demonstrated that a crack size margin of at least a factor of three (3) exists.

In view of the analytical results presented in References 4 and 5 and the staff's evaluation findings related above, the staff concluded that the probability or likelihood of large pipe breaks occuring in the primary collant system loop of a CESSAR facilty is sufficiently low such that protective devices associated with postulated pipe breaks in the CESSAR primary collant system need not be installed.

The staff evaluation (Reference 12) stated that applicants or licensees with CESSAR facilities who intend to use the "leak-before-break" approach to eliminate the need to install protective devices associated with postulated pipe breaks in their primary collant systems must confirm that their as-built facility design substantially agrees with the design described in References 4 and 5; specifically, the piping loads should be no greater than those cited in the references. Also, applicants or licensess must confirm that their leak detection systems meet the staff's requirements in (3) above.

In their application for a Construction Permit amendment (Reference 3), the applicants reference a letter, dated October 3, 1984, submitted by the Arizona Public Service Company on the Palo Verde docket (Reference 6). Reference 6 states that the leak-before-break analysis performed by CE (References 4 and 5) was performed on the Palo Verde design (as the prototypical CESSAR plant) using pertinent Palo Verde parameters. Hence, the CE analysis envelopes the Palo Verde design with respect to such parameter as loads, material properties, postulated crack leakage and size, seismicity, and leak detection system capabilities. In addition, the leak detection system for Palo Verde is consistent with the guidelines of Regulatory Guide 1.45 so that it can detect leakage of one (1) gpm in one hour. Therefore, the Palo Verde design substantially agrees with the design described in References 4 and 5.

Based on the above evaluation, the staff concludes that the probability or likelihood of large pipe breaks occurring in the RCS main loop piping for Palo Verde, Units 2 and 3 is sufficiently low such that large pipe breaks and their associated dynamic loads, as indicated in the applicants' December 10, 1984, letter, need not be considered as a design basis for requiring pipe whip restraints and jet impingement shields. Eliminating the need to consider these dynamic loads for this particular application does not in any way affect the design bases for the containment, the emergency core cooling system, or the environmental qualification for Palo Verde.

The staff also reviewed the value-impact analysis, provided by the applicants in their October 3, 1984, submittal (Reference 6) for not providing protective structures against postulated reactor coolant system loop pipe breaks, to assure as low as reasonably achievable (ALARA) exposure to plant personnel. The Palo Verde value-impact analysis shows that the elimination of protective devices for RCS pipe breaks will save an occupational dose for plant personnel of approximately 560 person-rem for each unit over the operating lifetime of the facility. The staff review of the analysis shows it to be a reasonable estimate of dose savings. Therefore, with respect to occupational exposure, the staff finds that there is a radiological benefit to be gained by eliminating the need for the protective structures.

VI

In view of the staff's evaluation findings, conclusions, and recommendations above, the Commission has determined that, pursuant to 10 CFR 50.12(a), this exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby approves the schedular partial exemption from GDC 4 of Appendix A to 10 CFR Part 50, to permit the applicants not to install pipe whip restraints and jet impingement shields and not to consider dynamic effects as detailed in Part II of this exemption, associated with postulated pipe breaks in the RCS main loop piping of Palo Verde, Units 2 and 3, as specified in the applicants' letters, dated June 7, 1984, December 10, 1984 and July 16, 1985.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (50 FR 48509).

The exemption is effective upon the date of issuance.

Dated at Bethesda, Maryland this 29th day of November 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

References

(1) Letter E.E. Van Brunt, Jr., of Arizona Public Service Company to the Nuclear Regulatory Commission, Docket Nos. STN 50-528/529/530, June 7, 1984.

(2) Letter E.E. Van Brunt, Jr., of Arizona Public Service Company to the Director of Nuclear Reactor Regulation, Docket Nos. STN 50-529/530, July 16, 1985

(3) Letter E.E. Van Brunt, Jr., of Arizona Public Service Company to the Nuclear Regulatory Commission, Docket Nos. STN 50-529/530, December 10, 1984, with enclosure, "Application for Amendments of Construction Permits Nos. CPPR-142 and CPPR-143".

(4) Letter A.E. Scherer of Combustion Engineering, Inc., to Darrell G. Eisenhut, Docket No. STN 50-470, June 14, 1983, with enclosure, "Basis for Design of Plant Without Pipe Whip Restraints for RCS Main Loop Piping".

(5) Letter A.E. Scherer of Combustion Engineering, Inc., to Darrell G. Eisenhut, Docket No. STN 50-470F, December 23, 1983, with enclosure, "Leak Before Break Evaluation of the Main Loop Piping of a CE Reactor Coolant System," Revision 1, November 1983.

(6) Letter E.E. Van Brunt, Jr., of Arizona Public Service Company, ANPP-30736 to the Nuclear Regulatory Commission, Docket Nos. STN 50-528/529/530, October 3, 1984.

(7) Mechanistic Fracture Evaluation of Reactor Coolant Pipe Containing a Postulated Circumferential Throughwall Crack, WCAP-9558, Rev. 2, May 1981, Westinghouse Class 2 proprietary.

(8) Tensile and Toughness Properties of Primary Piping Weld Metal for Use in Mechanistic Fracture Evaluation, WCAP-9787, May 1981, Westinghouse Class 2 proprietary.

(9) Westinghouse Response to Questions and Comments Raised by Members of ACRS Subcommittee on Metal Components During the Westinghouse Presentation of September 25, 1981, Letter Report NS-EPR-2519, E.P. Rahe to Darrell G. Eisenhut, November 10, 1981, Westinghouse Class 2 proprietary.

(10) NRC Generic Letter 84-04, "Safety Evaluation of Westinghouse Topical Reports Dealing with Elimination of Postulated Breaks in PWR Primary Main Loops," February 1, 1984.

(11) Lawrence Livermore National Laboratory Report, UCRL-86249, "Failure Probability of PWR Reactor Coolant Loop Piping," by T. Lo, H.H. Woo, G.S. Holman and C.K. Chou, February 1984 (Preprint of a paper intended for publication).

(12) NRC Letter Cecil O. Thomas to A.E. Scherer of Combustion Engineering, Inc., Docket No. STN 50-470, October 11, 1984, with enclosure, "Safety Evaluation Report on the Elimination of Large Primary Loop Ruptures as a Design Basis".

Note.—Non-proprietary versions of References 7 and 8 are available in the NRC Public Document Room as follows:

(7) WCAP 9570
(8) WCAP 9788

All other references are available in the NRC Public Document Room.

[FR Doc. 85-29006 Filed 12-5-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-143, License No. SNM-124, EA 84-128]

Nuclear Fuel Services, Inc. (Erwin Plant); Order Imposing Civil Monetary Penalty

I

Nuclear Fuel Services, Inc., (the "licensee") is the holder of Special Nuclear Materials License No. SNM-124 (the "license") issued by the Nuclear Regulatory Commission ("NRC" or "Commission") on March 16, 1979. The license authorizes the licensee to use special nuclear materials in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted on October 5-18, 1984. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated February 21, 1985. The Notice states the nature of the violation, the requirements of the Commission that were violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty with two letters dated May 22, 1985.

III

Upon consideration of Nuclear Fuel Services, Inc.'s responses and the statements of fact, explanation, and argument regarding mitigtion contained therein, the Director, Office of Inspection and Enforcement, has determined, as set forth in the Appendix to this Order, that the penalty proposed for the violations described in the Notice of Violation and Proposed Imposition of Civil Penalty should be reduced by 25% and a civil penalty of $15,000 be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, Pub. L. 96-295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifteen Thousand Dollars ($15,000) within thirty days of the date of this Order by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, Washington, DC 20555.

A copy of the hearing request shall also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time

and place of the hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above and

(b) Whether on the basis of such violation this Order should be sustained.

Dated at Bethesda, Maryland, this 27th day of November 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusions

The violation and associated civil penalty was identified in the Notice of Violation and Proposed Imposition of Civil Penalty dated February 21, 1985. The Office of Inspection and Enforcement's evaluation and conclusions regarding the licensee's responses dated May 22, 1985 are as follows:

Restatement of Violation

License Condition No. 9, Authorized Use, requires that licensed material be used in accordance with the statements, representations and conditions contained in Sections 100, 200, 300, 400, 500, 700 and 1000 of the licensee's application dated August 30, 1976 and the Supplements thereto. Amendment No. 25 dated May 9, 1984, incorporates Section 1400, High Enriched U-235 Scrap Recovery-Building 233, of the application supplement dated March 30, 1984.

Subsection 1422.2.1.1, Ventilation System Tanks, establishes action limits for the accumulation of uranium-bearing solids in the ventilation system tanks and requires that corrective actions be taken whenever an action limit is exceeded, which includes performing investigations to determine the cause of the excessive Uranium-235 in the system, and correction of the identified problems.

Contrary to the above, investigations were not performed or were inadequately performed when criticality safety action limits were exceeded in the 200 Complex on July 30, twice on July 31, and on September 11, 14, 15, 16, and 20, 1984.

This is a Severity Level II violation (Supplement VI).

(Civil Penalty—$20,000)

NFS Response

Nuclear Fuel Services, Inc. (NFS) agreed that the details contained in the Inspection Report were correctly stated but believed that the investigations which were performed should be considered adequate and protested the imposition of the proposed civil penalty. As background, NFS stated that it had identified, investigated, and taken corrective actions on its own initiative when elevated levels of uranium were detected in the exhaust scrubber solution in 1983 after the ventilation upgrade was installed and that it had informed the resident inspector. As a result, representatives from the Office of Nuclear Materials Safety and Safeguards visited the site, reviewed the scrubber operational data, and requested that NFS submit its corrective actions in a license amendment application. The license was amended requiring that an investigation, among other requirements, be performed to determine the cause of the excessive uranium in the system which action limits were exceeded.

According to NFS, when the new process ventilation system was installed in 1983, the licensee's nuclear criticality concerns centered around unsafe geometry vessels and tanks. The ducting was not considered in the nuclear criticality safety analysis because the ducting had been designed with appropriate air velocities to preclude the buildup of solids. NFS stated that it had assumed that the system was functioning properly when uranium was detected in the scrubber cone and scrubber solution in 1984, and it considered flushing of the cone to be an appropriate control action. The buildup of solids in the duct was not suspected because of system design. As a result, NFS concluded that its investigations and corrective actions were consistent with reasonable practices.

NRC Assessment

Amendment 25 (May 9, 1984) to Special Nuclear Material License No. SNM-124 requires the licensee to take the following corrective actions whenever an action limit for excessive uranium in the ventilation system tanks is exceeded:

1. If the uranium concentration exceeds 0.03 grams per liter the blowdown solution must be drained. (Current procedures for diluting and resampling of the solution prior to discharge to the WWTF must be followed.)

2. If the NDA measurement exceeds 50 grams U-235, the tank must be immediately drained, flushed, and/or cleaned until the scan value falls below the action limit.

3. An investigation to determine the cause of the excessive uranium in the system must be performed.

4. Identified problems must be corrected.

5. The Criticality and Licensing Supervisor must be notified.

6. Measurements, sample analysis, corrective actions, and investigations must be documented.

On two occasions when the action limits were exceeded (September 14 and 15, 1984) NFS failed to perform investigations. On six other occasions (July 30, twice on July 31, and September 11, 16 and 20, 1984), NFS failed to conduct adequate investigations to determine the cause, and to correct identified problems when limits were repeatedly exceeded.

The licensee's investigations were documented on an internal form titled "Unusual Situation Investigation Report." There was no indication that NFS's management pursued the cause of excessive uranium buildup or recommended any corrective action beyond what is contained in the investigation reports.

The results of the investigations as recorded by the licensee were as follows:

July 30, 1984: Upon discovering that the venturi scrubber scan value had exceeded the action limit established by the license, NFS flushed the scrubber cone four times until the blowdown tank was full. However, the licensee did not identify the cause of the incident or indicate what actions could be taken to prevent the situation from recurring.

July 31, 1984 (midnight): Upon discovering that the scrubber cone was scanning high, the licensee attempted to flush the cone was unable to do so because the blowdown T-2 and T-3 tanks were full. The licensee discontinued use of the scrap furnace (although the investigation report states scrubber) until blowdown tank capacity was available to flush the scrubber tank. Both the cause of the situation and actions to prevent recurrence were listed as unknown.

July 31, 1984 (day shift): Upon discovering that the scrubber blowdown tank scanned 14,174 counts (which exceeded the acceptable limit), the licensee called the lab to get sample results of the hold tanks. After the T-3 tank was emptied, the licensee pumped

the blowdown tank to the T-3 tank and continued to flush out the tank until the amount of uranium was below limits. However, the cause of the incident was not identified and no actions were taken to prevent the situation from recurring.

September 11, 1984: When the venturi scrubber cone scanned high, the air flow of the furnace was checked. The reading was 145 linear feet per minute, an acceptable flow rate. The scrubber cone was then flushed to the blowdown tank. The licensee listed the cause of the situation as unknown, and failed to identfy actions which could be taken to prevent the situation from recurring.

September 16, 1984: Upon discovering that the blowdown tank was high, the tank was washed out and re-scanned. The cause of the problem was attributed to a build-up on the walls of the tanks, however, no actions were taken to prevent the situation from recurring.

September 20, 1984: Licensee representatives stated that the action limit was exceeded and an investigation may have been performed; however, there is no report to document this investigation. There is also no indication that the licensee identified either the cause of the incident or actions which could be taken to prevent the situation from recurring.

As indicated from the above summaries, none of the investigations attempted to determine the root cause of the excessive uranium in the system, e.g., why the rate of buildup of uranium in the cone was greater than had been anticipated. The investigations were inadequate in that they did not at least examine (1) the extent to which material was being introduced into the system, (2) the extent to which material was being deposited in the system, (3) whether the existing NDA measurements program was adequate, and (4) the validity of NFS's assumption that the ventilation system had been appropriately designed and was properly functioning. The failure to pursue these issues led to the continued buildup of uranium in the scrubber and in the ducting leading to the scrubber. Since the root cause of the problem was not identified, no corrective actions were taken, as required by License Amendment 25, to solve the identified problems. This failure is evident from the licensee's own investigation reports, which describe no actions to prevent recurrence of the uranium buildup. Merely flushing the scrubber tank to reduce quantities to below the license limits without determining the cause of repeatedly exceeding the limits does not constitute sufficient corrective action to abate the continuing buildup of the excessive uranium in the system. In all events, flushing the tank is an action separately required by License Amendment 25. The staff recognizes that the license condition is expressly applicable only to the ventilation system tanks and not the duct work. However, License Amendment 25 requires that once the levels of uranium exceed stated action limits, the licensee must undertake an investigation to determine the cause of the problem, whatever the source. Continued instances of exceeding the action limits should have caused the licensee to investigate systems other than the tank itself to determine the cause of the problem in the ventilation system tanks.

The corrective measures and controls instituted by the licensee when above normal concentrations were detected in the scrubber solution in 1983 were commendable but have no relevance to the adequacy of the investigations required by License Amendment 25, which was issued in 1984. If adequate investigations had been performed to determine the cause of exceeding the license limits and appropriate corrective actions had been taken, material would not have continued to accumulate on the upper walls of the scrubber until October 5, 1984, when it was found to exceed the safe wet mass quantity for an unsafe geometry vessel.

The severity level for the violation was predicated on the quality of material found in both the S-shaped duct and the scrubber walls above the waterline with the recognition that each area was of significant concern. In addition, management failed to become involved, as would be expected, to an extent sufficient to call for comprehensive investigations that would have determined the root cause of exceeding the license limits and could have prevented the continuation of material buildup. Accumulating amounts of uranium 235 in excess of safe wet mass quantities in an unsafe geometry vessel is of very significant regulatory concern. Therefore, the severity level for this violation is appropriately classified as a Severity Level II.

An evaluation of the eight documents referenced in the May 22, 1985 response reveals that after the October 5, 1984 incident, the licensee conducted an investigation to identify the potential sources of the uranium buildup and to provide information upon which near-term and long-term corrective actions could be based. The cited documents further reveal that the licensee finally took extensive and comprehensive steps towards the identification and elimination of the sources of excessive uranium buildup. These actions included increased surveillance and detection for accumulations and sources, engineering evaluations for possible sources, modifications of existing systems to reduce sources and accumulations, and review of nuclear criticality safety of tanks and unsafe geometry vessels. Although the NRC does not consider the initiation of corrective actions to be prompt, the NRC considers 25% mitigation of the proposed civil penalty appropriate in view of the licensee's extensive and comprehensive corrective actions.

Conclusions

Of the eight cited instances where action limits were exceeded, no investigations were conducted in two instances and the investigations of the other six instances were inadequate because reasonable efforts were not made to determine the cause of exceeding the limits and to take appropriate corrective actions.

The Severity Level II violation was predicated on the fact that an accumulation of uranium in excess of a safe wet mass actually occurred in an unsafe geometry vessel and safety margins continued to decrease because of the inadequate investigations. Such an incident is a serious nuclear criticality safety event.

Although the base civil penalty for a Severity Level II is $20,000, the licensee's extensive and comprehensive corrective actions after the discovery of the accumulation warrant a 25% reduction of the civil penalty amount. Therefore, a civil penalty of $15,000 is imposed.

[FR Doc. 85-29008 Filed 12-5-85; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-387; 50-388]

Pennsylvania Power & Light Co. Susquehanna Steam Electric Station Units 1 and 2; Exemption

I

The Pennsylvania Power and Light Co. (PP&L/the licensee) is the holder of Facility License Nos. NPF-14 and NPF-22 which authorize operation of the Susquehanna Steam Electric Station, Unit 1 (SSES-1) and Unit 2 (SSES-2) at power levels not in excess of 3293 megawatts thermal for each unit. The facilities are boiling water reactors located at the licensee's site in Luzerne County, Pennsylvania. The licenses provide, among other things, that the facilities are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

Compliance with the single failure criterion for the onsite electric power supplies is required by 10 CFR 50, Appendix A, Criterion 17. In 10 CFR Part 50, Appendix A, "Criterion 17-Electrical Power Systems," paragraph 2 states that: "The onsite electric power supplies, including the batteries, and the onsite electric distribution system, shall have sufficient independence, redundancy, and testability to perform their safety functions assuming a single failure."

The Pennsylvania Power and Light Company proposed an extension to the Limiting Conditions of Operation for Technical Specifications 3.8.1.1 and 3.7.1.2 for both Units 1 and 2, which would allow the existing diesel geneators to be removed from service, one at a time, for a cumulative period of 60 days. The staff has found that approval of the proposed extension would conservatively warrant the granting of this one-time exemption for each Unit so that PP&L may continue to operate the plants during the tie-in of the fifth diesel generator. This tie-in work requires the connection of control and power circuits from the existing diesel generators to transfer points in the new diesel generator building.

With one diesel generator removed from service, PP&L cannot meet the single failure criterion for onsite electrical power supplies as stated in 10 CFR 50 Appendix A, Criterion 17. Thus, approval of the proposed extension would conservatively warrant the granting of this exemption from Criterion 17 for both SSES-1 and SSES-2.

It should be noted that the NRC staff's decision to process an exemption from the requirements of GDC-17 was made so as to intepret the regulations in the most conservative manner. It has previously been the staff's practice to grant LCO extensions to the Technical Specification requirements for out of service equipment, which is required to be operable, as long as the extension does not pose undue risk to the health and safety of the public. These actions have previously been taken without requiring exemptions to the regulations. Nevertheless, the staff has decided to process this temporary exemption from GDC-17. This action should not be viewed as a precedent for use in future considerations.

The exemption is required so as to extend the allowed out of service time for the diesel generators, one at a time, without requiring a shutdown of both units. This exemption will allow both units to remain at power during the tie-in work for the fifth diesel generator.

We have completed our review of the "Probabilistic Evaluation of Temporarily Extending the Diesel Generator LCO's," submitted by PP&L. This submittal was in support of the licensee's proposed one-time change to the Technical Specifications and one-time exemption from GDC-17. The staff has conservatively estimated the probability for severe core damage at one unit to be 3×10^{-5}. Of this, there is a probability of about 2×10^{-5} that both units will experience severe core damage. The probability that Unit 1 will experience severe core damage, but not Unit 2, is about 1×10^{-5} with a similar value for Unit 2 experiencing severe core damage but not Unit 1.

The staff finds that the addition of the 5th diesel generator will likely reduce the probability of severe core damage due to loss of offsite power events for the remainder of the life of the plants.

III

The NRC staff has evaluated the licensee's schedule for completing the fifth diesel generator tie-in relating to the temporary LCO extensions and finds that not granting this exemption could result in a forced two unit shutdown. Granting of this exemption would only slightly increase the probability of severe core damage due to a loss of offsite power event. The staff finds this temporary small increase in the probability of severe core damage during the proposed 60 days, coincident with a loss of offsite power event, is outweighed by the benefits of the improvement in safety over the remaining life of the plants due to the addition of this fifth diesel generator. For evaluating the changes to the Technical Specifications and the associated exemption, the staff reviewed the licensee's technical justifications for each change and the justifications based on the Probabilistic Risk Assessment (PRA) study on the subject. The staff also reviewed the reliability of the Offsite Power System as the preferred source of power for the plant's safe shutdown systems and the reliability of the existing diesel generators to ascertain that, while one of them is taken out of service to complete the new diesel generator tie-in work, the remaining three will provide a reliable source of emergency power. The tie-in work, including applicable procedures, was reviewed to demonstrate that this work will not degrade the operability of the safe shutdown systems, including the remaining diesel generators, while the plants continue to operate. Included in this review was the adequacy of the post-modification testing for each diesel generator before one diesel is returned to service and another one is taken out of service for the tie-in work. The staff also reviewed the related plant Emergency Procedures and operator training and knowledge to verify that such procedures are adequate for a postulated emergency during the LCO extension and that the operator would properly respond to the emergency. The details of the above described review are discussed in the attached Safety Evaluation.

Based on the information provided by the licensee, the staff's evaluation of the licensee's submittal and the staff's on site review of the design change packages and procedures to be used for the fifth diesel generator tie-in, the NRC staff concludes that the licensee has used proper planning, has available the proper procedures and detailed design change packages necessary to accomplish the fifth diesel generator tie-in work. The NRC staff finds that operation of SSES-1 and SSES-2 during the proposed LCO extensions is acceptable and that the availability of a fifth diesel generator gives an overall long term improvement in safety for the remaining life of the plants. Therefore, the staff finds that the proposed temporary exemption from 10 CFR Part 50, Appendix A, Criterion 17 is acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants the exemption as follows:

An exemption is granted from the single failure criterion for onsite electric power supplies as stated in 10 CFR Part 50, Appendix A, Criterion 17. This exemption is granted for the period specified in the licensee's September 23, 1985, request for exemption (60 cumulative days in the LCO) and is only applicable to SSES-1 and SSES-2 when a diesel generator is out of service specifically for the performance of the fifth diesel generator tie-in work.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (49 FR 48625).

A copy of the Commission's Safety Evaluation dated December 3, 1985, related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street

NW., Washington, DC and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18101.

This Exemption is effective upon commencement of the fifth diesel generator tie-in work and is to expire upon completion of 60 cumulative diesel outage days related to the tie-in of the fifth diesel generator.

Dated at Bethesda, Maryland, this 3rd day of December 1985.

For the Nuclear Regulatory Commission.

Robert Bernero,

Division of BWR Licensing.

[FR Doc. 85-29007 Filed 12-5-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Circular A-128, "Audits of State and Local Governments"

AGENCY: Office of Management and Budget.

ACTION: Instructions for submission of audit reports to a central clearinghouse.

SUMMARY: Circular A-128, "Audits of State and Local Governments," provides that recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. This notice announces that the clearinghouse will be located at the Census Bureau, Department of Commerce. Audit reports should be sent to: Bureau of the Census, Data Preparation Division, 1201 E 10th Street, Jeffersonville, Indiana 47132, Attn: Single Audit Clearinghouse.

FOR FURTHER INFORMATION CONTACT: John Coleman, Telephone No. (301) 763-7366.

Dated: November 21, 1985.

John J. Lordan,

Deputy Associate Director for Financial Management.

[FR Doc. 85-28941 Filed 12-5-85; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Reestablishment of an Investment Policy Advisory Committee

The U.S. Trade Representative has taken steps to reestablish an Investment Policy Advisory Committee. This Committee will be chartered pursuant to section 135(c)(2) of the Trade Act of 1974 (19 U.S.C. 2155(c)(2)), as amended; the Federal Advisory Committee Act (5 U.S.C. App. 1); section 4(b) of Executive Order No. 11846, March 27, 1985; and Executive Order No. 12188. The charter of this Committee will be filed 15 days from the date of this notice.

The Investment Policy Advisory Committee is being reestablished to provide the United States Trade Representative with policy advice and information regarding direct investment to the extent it relates to international trade, including the following area: operations of multinational enterprises, and multilateral and bilateral agreements on international investment, direct investment by Americans abroad and issues of direct foreign investment in the U.S.

The Committee will meet approximately three or four times per year, depending on the needs of the U.S. Trade Representative. The U.S. Trade Representative or his designee will convene meetings of the Committee.

Members of the Committee shall be appointed by, and serve at the discretion of the U.S. Trade Representative. Representatives from the private sector wishing further information or to be considered for appointment to serve on the Committee should contact: The United States Trade Representative, Office of Private Sector Liaison, 600 17th Street NW., Room 103 Washington, DC 20506, (202) 395-6120.

Signed,

Phyllis O. Bonanno,

Director, Office of Private Sector Liaison.

[FR Doc. 85-28977 Filed 12-5-85; 8:45 am]

BILLING CODE 3190-01-M

POSTAL RATE COMMISSION

[Order No. 558; Docket No. A86-5]

Perry, South Carolina 29124 (Thomas H. Williams et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: November 27, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket Number: A86-5.

Name Of Affected Post Office: Perry, South Carolina 29124.

Name(s) Of Petitioner(s): Thomas H. Williams and others.

Type of Determination: Closing.

Date Of Filing Of First Appeal Papers: November 25, 1985.

Categories Of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(A)].

2. Effect on the community [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before December 10, 1985.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Cyril J. Pittack,

Acting Secretary.

November 25, 1985—Filing of Petition
November 27, 1985—Notice and Order of Filing of Appeal
December 20, 1985—Last day for filing petitions to intervene [*see* 29 CFR 3001.111(b)]
December 30, 1985—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)]
January 21, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)]
February 5, 1986—(1) Petitioners' Reply Brief should Petitioners choose to file one [*see* 39 CFR 3001.115(d)]
February 12, 1986—(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116]
March 25, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 85-28929 Filed 12-5-85; 8:45 am]

BILLING CODE 7715-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: 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: Development Company Reporting Requirements

Frequency: Annually

Description of Respondents: Development companies must provide basic information to SBA to determine the viability and eligibility of the development companies and to protect SBA's financial interest

Annual Responses: 550

Annual Burden Hours: 825

Type of Request: Reinstatement

Title: The Performance of Definitive Federal Contracts by Large and Small Firms

Frequency: Non-recurring

Description of Respondents: Contracting officers will be queried on the performance of definitive federal contracts by large and small firms.

Annual Responses: Contracting officers will be queried on the performance of definitive federal contracts by large and small firms.

Annual Responses: 576

Annual Burden Hours: 280

Type of Request: New

Dated: November 22, 1985.

Richard Vizachero,

Chief, Administrative Procedures and Documentation Section, Small Business Administration.

[FR Doc. 85-29024 Filed 12-5-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2211; Amd. #3]

Puerto Rico; Declaration of Disaster Loan Area

The above-numbered Declaration (50 FR 42242), Amendment #1 (50 FR 45701) and Amendment #2 (50 FR 47317) are hereby amended in accordance with the amendment to the President's declaration of October 10, 1985, to include the Municipalities of Cidra and Rio Grande because of damage from severe storms, landslides, mudslides, and flooding beginning on October 6, 1985. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 9, 1985, and for economic injury until the close of business on July 10, 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008.)

Dated: November 14, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-28979 Filed 12-5-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2218 Amdt. #1]

Virginia; Declaration of Disaster Area

The above-numbered Declaration (50 FR 48145), issued in accordance with the President's declaration of November 9, 1985, is hereby amended to include Essex, Goochland, Henrico, Lancaster and Middlesex Counties, and the independent Cities of Hampton and Lexington because of damage from severe storms, landslides and flooding beginning on or about November 3, 1985. All other information remains the same, i.e., the termination date for filing applications for physical damage is the close of business on January 10, 1986, and for economic injury until the close of business on August 11, 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008.)

Dated: November 15, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-28980 Filed 12-5-85; 8:45 am]

BILLING CODE 8025-01-M

[Disaster Loan Area #2217; Amdt. #1]

West Virginia; Declaration of Disaster Area

The above-numbered Declaration (50 FR 48146), issued in accordance with the President's declaration of November 7, 1985, is hereby amended to include Barbour, Berkeley, Braxton, Calhoun, Doddridge, Gilmer, Hampshire, Jefferson, Lewis, Marion, Mineral, Monongalia, Monroe, Morgan, Nicholas, Randolph, Summers, Taylor, Tyler, Upshur, and Webster Counties because of damage from severe storms, landslides and flooding beginning on or about November 3, 1985. All other information remains the same, i.e., the termination date for filing applications for physical damage is the close of business on January 6, 1986, and for economic injury until the close of business on August 7, 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008.)

Dated: November 13, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-29025 Filed 12-5-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0290]

Ameriway Venture Partners I; Issuance of a License To Operate as a Small Business Investment Company

On August 12, 1985, a notice was published in the **Federal Register** (155 FR 1985), stating that Ameriway Venture Partners I (AMVP), Located at One Shell Plaza, Third Floor Houston, TX 77002, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1985), for a license to operate as a small business investment company under the provisions of Section 301(c) of the Small business Investment Act of 1958, as amended.

The period for comment expired on September 12, 1985, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 06/06-0290 to AMVP, effective November 19, 1985.

Dated: November 26, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-29020 Filed 12-5-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-0492]

NatWest USA Capital Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations governing small business investment companies (13 CFR 107.102 (1985)) under the name of NatWest USA Capital Corporation (the Applicant), 175 Water Street, New York, New York 10038 for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*) and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and sole stockholder of the Applicant are as follows:

Name and Address	Title of Relationship
Robert F. Wallace, 124 East 179 Street, New York, NY 10021.	Chairman of the Board and Director.
Brendan J. Dugan, 48 2nd Street, Brooklyn, NY 11231.	President, Director.
Orville G. Aarons, 340 E. 93rd Street, New York, NY 10028.	Senior VP & General Manager.
Edward L. Levine, 870 U.N. Plaza, New York, NY 10017.	Secretary.
Stephen W. Tallon, 166-25 Powells Cove Blvd., Beechhurst, NY 11357.	Treasurer.
C. Scott Barlett, 64 Melrose Place, Montclair, NJ 07042.	Director.
John A. Petts, 1095 Park Avenue, New York, NY 10128.	Director.
Alan C. Schreiber, 5 Pine Place, Harrington Park, NJ 07640.	Director.
National Westminster Bank USA, 175 Water Street, New York, NY 10038, (NatWest USA).	100 percent.

NatWest USA is a subsidiary of NatWest Holdings, Inc., a Delaware corporation, which, in turn, is owned by National Westminster Bank PLC of London, England with over 100,000 stockholders none of whom own in excess of 10 percent of PLC stock.

The Applicant will begin operations with a capitalization of $10,000,000.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA in writing revelant comments on the proposed licensing of this company. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in the New York City area.

Dated November 26, 1985.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-29021 Filed 12-5-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5363]

Princeton Finance Co.; 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)) by Princeton Finance Company, 2231 Colby Avenue, Los Angeles, California 90064 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.).*

On August 19, 1985, a similar notice of application was published in the **Federal Register** (Vol. 50, No. 160) under the same name, Princeton Finance Company. That Application was withdrawn on October 20, 1985.

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
Albert J. Robilotta, 554 8th Street, Hermosa Beach, CA 90254.	General Manager	0
John Kenneth Kim, 1670 Carla Ridge, Beverly Hills, CA 90210.	President, Director	50
Sarah Kim, 1670 Carla Ridge, Beverly Hills, CA 90210.	Chief Financial Officer, Director	40
Tong S. Suhr, 823 S. Almansor Street, Alhambra, CA 91801.	Secretary, Director	10

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of California. As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balance national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further 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 the newspaper of general circulation in the Los Angeles, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 26, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-29022 Filed 12-5-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-0365]

VK Capital Co.; 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)) by VK Capital Company, 50 California Street, Suite 2350, San Francisco, California 94111 for

a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*)

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
Franklin Van Kasper, 50 California Street, Suite 2350, San Francisco, California 90254	General partner	0.99
Bernard M. Goldsmith, 50 California Street, Suite 2350, San Francisco, California 94111	General partner	0.01
V.K. Ventures, 50 California Street, Suite 2350, San Francisco, California 94111	Limited partner	99.0

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further 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 San Francisco, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated November 26, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-29023 Filed 12-5-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/911]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea; Two Meetings

The Shipping Coordinating Committee's Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on January 16, 1986, in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting is to finalize preparations for the 52nd Session of the Maritime Safety Committee (MSC) which is scheduled for January 27–February 5, 1986 in London. In particular, the SOLAS Subcommittee will discuss the development of the U.S. positions dealing with, inter alia, the following topics:

—Reports of the various Subcommittees
—Preparation for 1988 SOLAS/Loadline Conference
—Casualty statistics
—Amendments to control procedures

For further information contact Mr. G.P. Yoest, U.S. Coast Guard Headquarters (G-CPI), 2100 Second Street, SW., Washington, DC 20593. Tel: (202) 426-2280.

Working Group on Ship Design and Equipment

The Working Group on Ship Design and Equipment of the SOLAS Subcommittee will conduct an open meeting at 9:30 AM on January 15, 1986, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The prupose of this meeting will be to formulate and discuss the United States' positions for the upcoming Twenty-Ninth Session of the Subcommittee on Ship Design and Equipment of the International Maritime Organization (IMO) to be held in May, 1986.

The agenda for this meeting includes the following discussion items:

1. Code on Alarm Systems—Harmonization of Alarms
2. Watertight Doors—Operating Mechanisms and Procedures
3. Maneuverability of Ship—Revision of Resolution A.209(VII)
4. Review of the Mobile Offshore Drilling Unit (MODU) Code:

—Stability
—Lifesaving
—Operating Manuals
—Anchoring Systems
—Climatic Zones
—Existing Units

Members of the public may attend both meetings up to the seating capacity of the room.

For further information contact Captain G.G. Piche, U.S. Coast Guard Headquarters (G-MTH/12), 2100 Second Street, SW., Washington, DC 20593. Tel: (202) 426-2167.

Dated: November 27, 1985.

William H. Dameron,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 85-28945 Filed 12-5-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q (See 14 CFR 302.1701 et seq.); Week Ended November 29, 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 expedited 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. 29, 1985	43625	Cathay Pacific Airways Limited, c/o Albert F. Grisard, Galland, Kharasch, Morse & Garfinkle, 1054 Thirty-first Street, NW., Washington, DC 20007. Application of Cathay Pacific Airways Limited pursuant to Section 402 of the Act and Subpart Q of the Regulations applies for amendments of the foreign air carrier permit to enable it to engage in foreign air transportation of persons, property and mail between Hong Kong, Vancouver, Canada, Honolulu/Seattle/San Francisco/Los Angeles and Vancouver V.V. Answers may be filed by December 27, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-29032 Filed 12-5-85; 8:45 am]

BILLING CODE 4910-62-M

Agreements Filed Under Sections 408, 409, 412 and 414 During the Week Ending November 29, 1985.

Answers may be filed within 21 days from date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
November 26, 1985.	43620, R-1—R-3	Members of International Air Transport Association	Japan-Korea Fares	Dec. 1, 1985.
			Australia-Europe Fares	Jan. 1, 1986.
November 27, 1985.	43623, R-1—R-3	Members of International Air Transport Association	Passenger Service Conference Resolutions	January 1985 to April 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-29033 Filed 12-5-85; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

Marlin Drikow; Denial of Petition for Defect Remedy Hearing

This notice sets forth the reasons for the denial of a petition by Marlin Drikow of St. Louis, Mo. to conduct a hearing to determine whether a manufacturer had reasonably met its obligation to remedy a safety-related defect (15 U.S.C. 1416).

On April 16, 1985, Mr. Drikow alleged to NHTSA that General Motors Corporation had failed in its obligation to remedy a safety related defect in his 1983 GMC S-15 Jimmy. GM Campaign 83-C-11 conducted in July 1984 was intended to replace transmission lubricant which could break down under certain conditions and cause the transmission first gear to seize on the mainshaft, resulting in rear wheel lockup. Subsequent to having his transmission fluid replaced under the campaign, Mr. Drikow experienced a transmission failure. NHTSA investigation, however, revealed that the second gear, not the first, had seized on the mainshaft, and that the probable cause of the failure was a low fluid level or lack of lubrication, rather than breakdown of the fluid which was the defect the recall was intended to prevent. Because GM had met its responsibility to correct a safety-related defect, Mr. Drikow's petition was denied on August 16, 1985.

(Sec. 156, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1416); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 28, 1985.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 85-28931 Filed 12-5-85; 8:45 am]

BILLING CODE 4910-59-M

William B. Williams; Denial of Motor Vehicle Defect Petitions

This notice sets forth the reasons for the denial of petitions submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*).

On December 30, 1984, William B. Williams of Jennison, Michigan, asked the agency to conduct an investigation into alleged low speed stalling in 1984 Ford Ranger S pickup trucks equipped with 2.0 liter engines. Mr. Williams and his family had twice been put into potentially life-threatening situations, according to him, and six visits to his Ford dealer had not corrected the problem.

Stalling complaints are generally the result of faults in the vehicle's fuel or ignition systems. Congressionally-mandated improvements in fuel economy an control of exhaust emissions have resulted in the introduction of increasingly sophisticated fuel and spark control systems. Adjustments are critical and malfunction or improper adjustment may lead to stalling or hesitation. However, as exasperating as poor vehicle performance and driveway stalls may be, they rarely exist in a situation which can be construed as safety-related. NHTSA's records indicated that there were five other complaints of engine performance on the subject trucks, with only one of them related to low-speed stalling while downshifting (the petitioner's failure mode), from a total vehicle population of around 66,000. There did not seem to be a trend or pattern indicating a widespread problem affecting a significant population of vehicles.

Accordingly, it did not appear to NHTSA a reasonable possibility that at the conclusion of an investigation the manufacturer would be ordered to recall the vehicles, and it denied the petition of April 26, 1985.

Richard P. Nolan of Honolulu, Hawaii, petitioned the agency on March 27, 1985, alleging that 1984-model Cadillac Eldorado vehicles may contain a safety-related defect due to intrusion of carbon monoxide into the passenger compartment. Air sampling conducted on his car by a laboratory detected a maximum of 6.6 parts per million (ppm) of carbon monoxide at the inside of the left door, near the dashboard. Research has shown, however, that small concentrations of up to 50 ppm of carbon monoxide are tolerated by humans for an indefinite period of time. The level reported was approximately only 13% of this threshhold and is representative of ambient levels experienced in traffic. The agency also contacted General Motors, which manufactured the Eldorado, and searched its own files, finding no similar complaints.

As it did not appear to be a reasonable possibility that an order requiring notification and remedy would be issued at the conclusion of an investigation, the agency denied the petition on June 5, 1985.

An allegation that 1985 Fore Ranger trucks with 2.8 litre V-6 engines stall between shifts of the gears was the subject of a petition dated April 2, 1985, received from Jeffrey M. Weyenberg, of Appleton, Wisconsin. The petition was denied on June 6, 1985, for reasons similar to the denial of the Williams petition discussed above.

(Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: November 14, 1985.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 85-28930 Filed 12-5-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 85-196]

Revision of Fee Charged Proprietors of Warehouse Facilities

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document advises the public that the annual fee charged proprietors of Customs bonded warehouses for audits, inspections, and related services is being revised for 1986. The fee, which is based upon the actual number of open warehouse entries on file by any particular warehouse proprietor, is charged in order to return to the Government the approximate cost of the services provided at these facilities by Customs officers.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Holl, Office of Inspection and Control (202-566-8151), or Matthew J. Krimski, Regulatory Audit Division (202-566-2812), Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

By T.D. 82-204, published in the **Federal Register** on November 1, 1982 (47 FR 49355), Customs amended its regulations contained in title 19, Code of Federal Regulations, Chapter I (19 CFR Chapter I), to implement changes relating to the control of merchandise in Customs bonded warehouses by establishing an audit-inspection program. That document also provided for the assessment and collection of fees to establish, alter, or relocate a bonded warehouse and an annual fee to reimburse the Customs appropriation for services rendered to the warehouse community.

As amended, § 19.5, Customs Regulations (19 CFR 19.5), provides that each warehouse proprietor will be charged a fee to establish, alter or relocate a warehouse facility which shall be determined under 31 U.S.C. 9701. By T.D. 85-70, published in the **Federal Register** on April 17, 1985 (50 FR 15414), the original fees set forth in T.D. 82-204 were revised as follows:

1. Establish a bonded warehouse—$1,021.

2. Alter an existing bonded warehouse—$442.

3. Relocate an existing bonded warehouse—$442.

In addition, each warehouse proprietor granted the right to operate a warehouse facility is charged an annual fee which is determined under § 555, Tariff Act of 1930, as amended (19 U.S.C. 1555).

The purpose of the annual warehouse fee is to reimburse the Customs appropriation for services rendered to the warehouse community including audit, inspection, and related administrative costs, and is to be projected on the basis of the annual cost to Customs in the preceding year plus any Federal salary increases.

From the time that the audit-inspection program started in November 1982, by T.D. 82-204, until publication of a revised fee as T.D. 85-36 in the **Federal Register** on February 27, 1985 (50 FR 8043), the fee had been $650. The February notice, which was effective retroactively to January 1, 1985, set the fee for 1985 at $1,400.

The 1985 fee was based on the calculation of actual resources for 52 Customs positions authorized for the audit-inspection program. The calculation included salary, benefits, overhead, travel and related expenses for 17 auditors and 35 inspectors. The total came to $2,154,808, which when divided by the 1,533 bonded warehouses yielded an annual fee of $1,406 for each warehouse. This figure was rounded down to $1,400. The 1986 calculations for the necessary resources include the last pay raise, but have been slightly lowered because it has been determined that the audit-inspection functions can be accomplished by utilizing a few lower graded positions. The total necessary resources to fund the 35 inspectional positions and 17 audit positions amounts to $2,115,550, which when divided by the present number of warehouses (1495) equals $1,415 per warehouse.

However, because of interest from the warehouse industry and of the concern of Customs management to equalize these fees as best possible, it has been decided to establish a tiered system of fees based on the number of open warehouse entries during any part of each warehouse's business year.

The tiered system requires the following fees for 1986:

Tier I (0-100 entries)=$1,000.

Tier II (101 to 500 entries)=$2,500.

Tier III (501 or more entries)=$5,000.

At the present time there are 1176 warehouses in Tier I, 248 in Tier II, and 71 in Tier III. If Customs collects the above-stated fee from each of them, the total collected will be $2,151,000. This would equal $1,439 per warehouse. However, Customs expects that the total collections will be less because the number of warehouses declines slightly each year.

The selection of the tier criteria was based on Customs best judgement in order to give relief to the small warehouses and apportion the remaining costs of the program in a logical manner to the larger warehouses. With an established average fee of $1,400 for 1985 as a starting point, it was decided that the smaller warehouse fee should be less than the 1985 average fee. By selecting $1,000 as the minimum fee for warehouses, the two higher tiers had to absorb the difference in the lowered fee. The fee adjustment also took into account the fact that Customs is precluded from collecting more than the cost of efforts expended in the warehouse audit-inspection program.

Under the tiered system, the 1986 fee will be $400 less than the 1985 fee for approximately 79 percent of all warehouses. The remaining two tiers will pay increases, but it is Customs opinion that these fees will still be significantly lower than those paid under the old system when Customs Warehouse Officers were assigned to warehouses. It is estimated that Tier II and Tier III warehouses, many of which used to have a Customs Warehouse Officer assigned, would today be paying approximately $20,000 annually to reimburse Customs for the services of an officer. In Customs judgement, this represents a significant savings for Tier II and III warehouses while offering relief to the smaller warehouse operations.

Action

The annual fee to be charged for 1986 is established on a 3-level system. The fee for those proprietors holding merchandise covered by 0 to 100 entries is set at $1,000 (this level includes approximately 79 percent of the affected proprietors). The fee for those proprietors holding merchandise covered by 101 to 500 entries is set at $2,500 (this level includes approximately 16.5 percent of the affected proprietors). Finally, the fee for those proprietors holding merchandise covered by 501 or more entries is set at $5,000 (this level includes approximately 4.5 percent of the affected proprietors).

Authority

The authority for this change is contained in 19 U.S.C. 66, 1312, 1551, 1555, 1624, 1646a, and 31 U.S.C. 9701.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However,

personel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: November 26, 1985.

John W. Mangels,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-29137 Filed 12-5-85; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

Iowa National Mutual Insurance Co., Surety Companies Acceptable on Federal Bonds; Liquidation

Iowa National Mutual Insurance Company, an Iowa Corporation, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 50 FR 27121, July 1, 1985. The company's authority was terminated by the Department of the Treasury effective October 17, 1985. Notice of the termination was published in the Federal Register of October 29, 1985, on page 43830.

On October 10, 1985, upon a petition by the Commissioner of Insurance of the State of Iowa, the District Court for Polk County issued an Order of Liquidation with respect to Iowa National. The Commissioner of Insurance was appointed as the Liquidator of Iowa National. All persons having claims against Iowa National must file their claims before October 10, 1986, or be barred from sharing in the distribution of assets.

Please note that all liabilities have been fixed as of midnight, November 9, 1985. All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. It is recommended that claimants asserting priority status under 31 USC 3713 who have not yet filed their claim should do so, in writing, to: Mr. Emile J. Molin, Deputy Liquidator for Iowa National Mutual Insurance Company, Iowa Insurance Department, Box 111, Cedar Rapids, IA 52406.

The above office will forward a proof of claim form to claimants.

Government agencies involved in Federal surety bonding operations where third parties such as subcontractors, materialmen, and suppliers may have a claim against the company are requested to use their best efforts to notify such third parties of the liquidation, assist them in filing claims, inform them of their priority status based on section 3713 of Title 31 of the United States Code and provide them with copies of this Federal Register Notice. If priority status is not being granted, please notify the Department of Treasury at the address indicated below.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226, telephone (202) 634-239. This Notice will be distributed by this office to Federal agencies.

Dated: November 26, 1985.

W. E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-28971 Filed 12-5-85; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 40]

National-Ben Franklin Insurance Co. of Michigan and National-Ben Franklin Insurance Co. of Illinois; Surety Companies Acceptable on Federal Bonds

National-Ben Franklin Insurance Company of Michigan held a Treasury Certificate of Authority as an acceptable surety on Federal bonds and was last listed at 49 FR 27257, July 2, 1984. National-Ben Franklin of Michigan merged into its parent company, National-Ben Franklin Insurance Company of Illinois, effective December 31, 1984. Confirmation of this action has been received and filed with the Treasury. Accordingly, the Certificate of Authority issued to National-Ben Franklin Insurance Company of Michigan is hereby terminated retroactive to the December 31, 1984 merger date. The surviving company, National-Ben Insurance Company of Illinois has acquired the assets and liabilities of its former subsidiary and is currently listed as an acceptable surety on Federal Bonds at 50 FR 27124, July 1, 1985.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20266, telephone (202) 634-2319.

Dated: November 25, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-28972 Filed 12-5-85; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

The United States Advisory Commission on Public Diplomacy will meet in Room 600, 301 4th Street SW., on December 18 from 10:00 a.m. to 1:00 p.m.

The meeting will be closed to the public from 10:00 a.m.-12:00 p.m. because it will involve discussion of classified information relating to security policies and procedures at USIA's overseas posts, followed thereafter by a discussion of classified information relating to U.S. arms control policies. (5 U.S.C. 552b(c)(1)) Premature disclosure of this information is likely to frustrate significantly implementation of proposed Agency action, because there will be a discussion of future Agency policy and programs. (5 U.S.C. 552b(c)(9)(B))

From 10:00 a.m.-11:00 a.m. the Commission will meet with Mr. Robert E. Lamb, Director, Bureau of Diplomatic Security, Department of State, or his designee. From 11:00 a.m.-12:00 noon it will meet with Ambassador Edward W. Rowny, Special Advisor to the President and the Secretary of State for Arms Control Matters.

From 12:00 noon-1:00 p.m. the Commission will meet in open session with Mr. Alvin Snyder, Director of USIA's Office of Television and Film Service to discuss WORLDNET programs.

Please call Gloria Kalamets, (202) 485-2468 for further information.

Dated: December 2, 1985.

Charles Z. Wick,

Director.

[FR Doc. 85-28978 Filed 12-5-85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amended Systems of Records

Notice is hereby given that the Veterans Administration is amending the systems of records entitled 36VA00, "Veterans and Armed Forces Personnel United States Government Life Insurance Records-VA" and 46VA00, "Veterans, Beneficiaries, and Attorneys United States Government Insurance Award Records-VA." Specifically, all VA Regional Offices with the exception of the VA Regional Office in Manila, Philippines, will be granted direct access to information in these systems through the ITS (Insurance Terminal System).

Government Life Insurance account and award information on veterans and beneficiaries will be available to authorized Veterans Service Division personnel through VDT's (video display terminals).

This expanded access is being provided in order to give VA Regional Office personnel the ability to respond to routine Government Life Insurance inquiries. The information that will be displayed on VDT's is from automated files located at the VA Data Processing Center in Philadelphia, Pennsylvania, and is stored on magnetic tape and/or disk. Access to insurance records by regional offices will be limited to specifically authorized individuals on a need-to-know basis. The ITS uses a VA telecommunications terminal system known as the Target System which provides computerized access controls for security purposes.

The notices of these systems of records are also being revised to reflect the retention and disposal of records in accordance with disposition authorization that was approved by the Archivist of the United States in 1983. Accordingly, the VA is amending the paragraphs pertaining to the system location, safeguards, retention and disposal, and notification procedure.

A "Report of Intention to Publish a **Federal Register** Notice of a New System of Records" and an advance copy of the new system notice have been provided to the Speaker of the House, the President of the Senate, and the Director, Office of Management and Budget (OMB), as required by the provisions of 5 U.S.C. 552a(o) and the Privacy Act Guidelines issued by OMB on October 3, 1975 (40 FR 45877).

These changes are administrative in nature; therefore no public comment is required.

Approved: November 27, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Notice of Amendments to Systems of Records

1. In the system identified as 36VA00, "Veterans and Armed Forces Personnel United States Government Life Insurance Records-VA" on page 718 of the Privacy Act Issuances, 1984 Compilation, Vol. V., and amended at 50 FR 13448 (April 4, 1985), the system notice is revised as follows:

36VA00

SYSTEM NAME:

Veterans and Armed Forces Personnel United States Government Life Insurance Records-VA

SYSTEM LOCATION:

Active records are located at the VA Regional Office and Insurance Centers in Philadelphia, Pennsylvania, and St. Paul, Minnesota. Inactive records are stored at various servicing Federal Archives and Records Centers and at the VA Records Processing Center in St. Louis, Missouri. Information from these files is also maintained in automated files at the VA Data Processing Centers in Philadelphia, Pennsylvania, and St. Paul, Minnesota. Information from the automated files in Philadelphia is available to all VA Regional Offices, except Manila, Philippines, through the ITS (Insurance Terminal System) which provides direct access to the records via video display terminals. Duplicate copies of certain manual and automated files are maintained at other locations in accordance with Federal and VA policy on security and vital records. Address locations of VA facilities are listed in VA Appendix 1 at the end of this document.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

* * * * *

SAFEGUARDS:

1. *Physical Security.* a. All VA facilites are protected from outside access by the Federal Protective Service or other security personnel. All file areas are restricted to authorized personnel on a need-to-know basis. Areas containing paper records are protected by a sprinkler system. Paper records pertaining to employees and public figures, or otherwise sensitive files, are stored in locked files. Microfilm records are stored in a locked fireproof, humidity-controlled vault. Automated records which are not in use at the data processing centers are stored in secured, locked vault areas. Special instructions on the confidentiality of Beneficiary and Optional Settlement information have been issued to VA personnel, and release of this information is strictly limited to the insured.

b. Access to VA data processing centers is restricted to center employees, custodial personnel, and Federal Protective Service or other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted by an individual with authorized access.

c. At Regional Office and the Regional Office and Insurance Centers the video display terminals on the ITS (Insurance Terminal System) are protected by key locks, magnetic access card readers, and audible alarms. Electronic keyboard locks are activated on security errors. A security officer at each facility is assigned responsibility for privacy-security measures, including review of violations logs and local control and distribution of passwards and magnetic access cards.

2. *System Security.* a. At the data processing centers, identification of magnetic tapes and disks containing data is rigidly enforced using manual and automated labeling techniques. Access to computer programs is controlled at three levels: programming, auditing, and operations.

b. The ITS (Insurance Terminal System) uses the VA data telecommunications terminal system known as the Target System which provides computerized access control for security purposes. This system provides automated recognition of authorized users and their respective access levels/restrictions through passwords and magnetic access cards. Passwords are changed periodically and are restricted to authorized individuals on a need-to-know basis for system access or security purposes.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States. The primary record, the insurance folder, is retained at the VA Regional Office and Insurance Center until it has been inactive for 36 months; at which time it is retired to a servicing Federal Archives and Records Center for 50 years retention and destroyed.

* * * * *

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or who has a routine inquiry concerning the status of his or her insurance under this system may contact the nearest VA Regional Office. Requests concerning the specific content of a record must be in writing or in person to the VA Regional Office and Insurance Center at Philadelphia, Pennsylvania, or St. Paul, Minnesota, where the insurance folder is maintained. The Inquirer should provide full name of the veteran, insurance file number, and date of birth. If insurance file number is not availble, the social security number, service number, VA claim number, and/or location of

insurance records. Address locations of VA facilities are listed in VA Appendix 1 at the end of this document.

* * * * *

2. In the system identified as 46VA00, "Veterans, Beneficiaries, and Attorneys United States Government Insurance Award Records-VA" on page 727 of the Privacy Act Issuances, 1984 Compilation, Vol. V, and amended at 50 FR 13448 (April 4, 1985), the system notice is revised as follows:

46VA00

SYSTEM NAME:

Veterans, Beneficiaries, and Attorneys United States Government Insurance Award Records—VA.

SYSTEM LOCATION:

Active records are located at the VA Regional Office and Insurance Centers in Philadelphia, Pennsylvania, and St. Paul, Minnesota. Inactive records are stored at various servicing Federal Archives and Records Centers and at the VA Records Processing Center in St. Louis, Missouri. Some pre-1968 records pertaining to beneficiaries of deceased veterans may be maintained in regional offices. Information from these files is also maintained in automated files at the VA Data Processing Centers in Philadelphia, Pennsylvania, and St. Paul, Minnesota. Information from the automated files in Philadelphia is available to all VA Regional Offices, except Manila, Philippines, through the ITS (Insurance Terminal System) which provides direct access to the records via video display terminals. Duplicate copies of certain manual and automated files are maintained at other locations in accordance with Federal and VA policy on security and vital records. Address locations of VA facilities are listed in VA Appendix 1 at the end of this document.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

* * * * *

SAFEGUARDS:

1. *Physical Security:* a. All VA facilities are protected outside access by the Federal Protective Service or other security personnel. All file areas are restricted to authorized personnel on a need-to-know basis. Areas containing paper records are protected by a sprinkler system. Paper records pertaining to employees and public figures, or otherwise sensitive files, are stored in locked files. Microfilm records are stored in a locked fireproof, humidity-controlled vault. Automated records which are not in use at the data processing centers are stored in secured, locked vault areas.

b. Access to VA data processing centers is restricted to center employees, custodial personnel, and Federal Protective Service or other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted by an individual with authorized access.

c. At Regional Offices and the Regional Office and Insurance Centers the video display terminals on the ITS (Insurance Terminal System) are protected by key locks, magnetic access card readers, and audible alarms. Electronic keyboard locks are activated on security errors. A security officer at each facility is assigned responsibility for privacy-security measures, including review of violations logs and local control and distribution of passwords and magnetic access cards.

2. *System Security.* a. At the data processing centers, identification of magnetic tapes and disks containing data is rigidly enforced using manual and automated labeling techniques. Access to computer programs is controlled at three levels: programming, auditing, and operations.

b. The ITS (Insurance Terminal System) uses the VA data telecommunications terminal system known as the Target System which provides computerized access control for security purposes. This system provides automated recognition of authorized users and their respective access levels/restrictions through passwords and magnetic access cards. Passwords are changed periodically and are restricted to authorized individuals on a need-to-know basis for system access or security purposes.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States. The primary record, the insurance folder, is retained at the VA Regional Office and Insurance Center until it has been inactive for 36 months; at which time it is retired to a servicing Federal Archives and Records Center for 50 years retention and destroyed.

* * * * *

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or who has a routine inquiry concerning the status of his or her insurance under this system may contact the nearest VA Regional Office. Requests concerning the specific content of a record must be in writing or in person to the VA Regional Office and Insurance Center at Philadelphia, Pennsylvania, or St. Paul, Minnesota, where the insurance folder is maintained. The inquirer should provide full name of the veteran, insurance file number, and date of birth. If insurance file number is not available, the social security number, service number, VA claim number, and/or location of insurance records will aid VA personnel in locating official insurance records. Address locations of VA facilities are listed in VA Appendix 1 at the end of this document.

* * * * *

[FR Doc. 85-28948 Filed 12-5-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 235
Friday, December 6, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Civil Rights Commission	1
Federal Deposit Insurance Corporation	2
Federal Home Loan Mortgage Corporation	3
Federal Mine Safety and Health Review Commission	4

1

COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC.

DATE AND TIME: Tuesday, December 10, 1985, 9:00 a.m.–5:00 p.m.

STATUS: Open to public.

MATTERS TO BE CONSIDERED:

I. Approval Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Funds
  B. Personnel Report
  C. Office Director Reports'
IV. Presentation by Dr. Gary Orfield, Former Consultant to the School Desegregation Project
V. Proposed Regulations for the U.S. Commission on Civil Rights Under Section 504 of the Rehabilitation Act of 1973
VI. Discussion of Project Design for the Commission Hearing on Indian Tribal Justice
VII. Civil Rights Developments in the Western Region

FOR FURTHER INFORMATION PLEASE CONTACT: Barbara Brooks, Press and Communications Division, (202) 376-8314.

Lawrence B. Glick,
Solicitor.
December 4, 1985.

[FR Doc. 85-29148 Filed 12-4-85; 3:40 pm]
BILLING CODE 6335-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, December 2, 1985, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum regarding the Corporation's liquidation and receivership activities.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: December 3, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.
[FR doc. 85-29076 Filed 12-4-85; 11:28 am]
BILLING CODE 6714-01-M

3

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Monday, December 9, 1985, 1:00 p.m.

PLACE: 1776 G Street, NW., Washington, DC Conference Room 8C.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, DC 20013 (202) 789-5097.

MATTERS TO BE CONSIDERED:

Closed: Minutes of October 11, 1985 and November 3, 1985 Board of Directors' Meetings
Closed: President's Report
Closed: 1986 Plan and Budget
Closed: Financial Report

Date sent to Federal Register: December 4, 1985.

Maud Mater,
Secretary.
[FR Doc. 85-29115 Filed 12-4-85; 3:21 pm]
BILLING CODE 6720-02-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

December 3, 1985.

TIME AND DATE: 10:00 a.m., Wednesday, December 11, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. The NACCO Mining Company, Docket No. LAKE 85-87-R, (Consideration of a request for reconsideration).
2. Secretary of Labor ex rel. Ronnie D. Beavers, et al. v. Kitt Energy Corporation, Docket No. WEVA 85-73-D. (Inquiry as to whether an ex parte communication may have already occurred).
3. Local Union 1609, District 2, UMWA v. Greenwich Collieries, Docket No. PENN 84-158-C. (Consideration of procedural motions).

It was determined by a unanimous vote of Commissioners that this meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 85-29124 Filed 12-4-85; 1:05 pm]
BILLING CODE 6735-01-M

Friday
December 6, 1985

Part II

Department of Health and Human Services

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance; Revised Medical Criteria for the Determination of Disability; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Revised Medical Criteria for the Determination of Disability

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These amendments revise the medical evaluation criteria for both the title II and title XVI disability programs. These criteria were last revised in 1979 (except for mental disorders listings). The revisions reflect advances in the medical treatment of some conditions and in the methods of evaluating certain impairments. These rules will provide up-to-date medical criteria for use in the evaluation of disability claims.

DATES: These regulations are effective January 6, 1986. Because of the number of disability regulations that have been recently issued, we want to be sure that the State disability determination services have adequate time to conduct training on these regulations before they become effective. Therefore, in this instance we are delaying the effective date for thirty days. For the reasons given below, we will consider additional comments if we receive them no later than January 6, 1986.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–594–7415.

SUPPLEMENTARY INFORMATION:

The Programs

The Social Security Act (the Act) provides, under title II, for the payment of Federal disability insurance benefits to disabled individuals insured under the Act. The Act also provides, in title XVI, for the payment of benefits under the Supplemental Security Income program to persons who are blind or disabled and have limited income and resources. Under both programs, blindness means a central visual acuity of 20/200 or less in the better eye with use of a correcting lens. An eye which is accompanied by a limitation in the field of vision so that the widest diameter of visual field subtends an angle no greater than 20 degrees shall be considered as having a central visual acuity of 20/200 or less. Disability under both programs means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months.

The Listing of Impairments

The medical criteria for evaluating disability and blindness without considering vocational factors are found in the Listing of Impairments (the Listing). From the beginning of the disability program in 1955, there has been an established list of medical impairments which, in and of themselves, are considered sufficient to preclude any gainful activity, absent evidence to the contrary. The original Listing was based upon advice from a national group of medical advisors and, in part, the experience of other agencies administering disability programs. As the Social Security Administration gained experience in evaluating disability claims, the Listing was periodically reviewed and revised as appropriate. Changes in the Social Security law also have affected the Listing.

In 1968, after over a decade of operating experience, the Listing was revised and incorporated into the regulations as an appendix to Subpart P of Part 404. This appendix is presently divided into a Part A and a Part B. The criteria in Part A apply mainly to evaluating impairments of adults but may be appropriate in some cases to evaluating impairments in children under age 18. Part B of Appendix 1 contains medical criteria for the evaluation of impairments of children under age 18 where criteria in Part A do not give appropriate consideration to the particular disease processes in childhood. Part B was initially included in Appendix 1 of Subpart I of Part 416 in 1977, subsequent to the enactment of the Supplemental Security Income Program. While Part B applies mainly to claims under title XVI, it also applies in evaluating some claims under the title II disability insurance program.

In 1979, the Listing was updated again to reflect advances in the medical treatment of some conditions and in the methods of evaluating certain impairments. These revised rules were published in the **Federal Register** (44 FR 18170) on March 27, 1979. Until 1980, the Listing was contained in the regulations as an appendix to Subpart P of Part 404 (title II disability program) and also as an appendix to Subpart I of Part 416 (title XVI disability program). In recodifying these subparts in 1980, we took the medical criteria used in making disability determinations out of Part 416 and placed them only in Appendix 1 of Subpart P of Part 404. This was done to eliminate repetition in our regulations, since the same medical criteria generally apply to both the title II and title XVI disability programs. In view of the fact that Parts 404 and 416 are both published in Chapter III (Parts 400 to 499) of title 20 of the Code of Federal Regulations (CFR), this material is available to everyone in one volume of the CFR. This recodification was published in the **Federal Register** (45 FR 55566) on August 20, 1980. Another Notice of Proposed Rule Making pertaining to proposed revisions to the "12.00 Mental Disorders" was published in the **Federal Register** (50 FR 4948) on February 4, 1985. We carefully evaluated all the comments we received and final regulations were published in the **Federal Register** (50 FR 35038) on August 28, 1985. These amendments reflected advances in medical treatment and in methods of evaluating mental impairments.

These current amendments were published as a Notice of Proposed Rule Making in the **Federal Register** (47 FR 19620) on May 6, 1982. Interested persons, organizations, and groups were invited to submit data, views or arguments pertaining to the proposed amendments within a period of 60 days from the date of publication of the notice. The comment period ended on July 6, 1982. After carefully considering all the comments submitted, the proposed amendments are being adopted with some modifications, which will be explained later in this preamble. We will also reply to the many issues raised in the comments we received.

Our objective in publishing these amendments is to provide up-to-date medical criteria for the use in the evaluation of Social Security disability and blindness claims. However, this is an ongoing process because of the dynamic nature of diagnosis, evaluation, and treatment of impairments.

Therefore, should you have any recommendations on how we can continue to refine these medical criteria so they remain up-to-date, please do so in the 30-day comment period. Your comments will be considered for the purpose of initiating future revisions to the medical criteria.

The Listing includes medical conditions frequently diagnosed for people who file for disability benefits. It describes, for each of the 13 major body systems, impairments that are severe enough to prevent a person from doing gainful activity. Most of the listed impairments are permanent or are expected to result in death, or a specific statement of duration is made. The evidence must show that the impairment has lasted or can be expected to last for a continuous period of not less than 12 months.

Purpose of the Listing

Using the Listing should assure that our disability determinations have a sound medical basis, that we will be able to treat equally all persons applying for disability benefits who are similarly situated, and that we will be able to readily identify those persons who are unable to do any gainful activity. The Listing sets out medical impairments which, in and of themselves, are considered severe enough to preclude gainful work, absent evidence to the contrary. Thus, if a person's impairment or combination of impairments meets or exceeds the level of severity described in the Listing, we find that he or she is disabled solely on the basis of the medical facts, unless we have evidence to the contrary; for example, evidence that the person is actually doing substantial gainful activity.

The Listing does not include all impairments. An unlisted impairment or impairments may be determined to be medically equivalent to an impairment contained in the Listing.

How We Use the Listing

Since the Listing contains the medical criteria we use for evaluating disability, it is an essential tool in the disability evaluation process. In determining whether or not a person's impairment constitutes a disability, we normally follow a sequential evaluation process. We do not go through this sequence for title II claims of widow(er)s, or Supplemental Security Income claims of children under age 18. This process consists of five steps as follows:

(1) If the person is actually doing substantial gainful activity, we determine that he or she is not disabled, no matter how severe his or her impairment(s) may be.

(2) If a person does not have any impairment(s) which significantly limits his or her physical or mental capacity to perform basic work-related functions, we determine that he or she does not have a severe impairment and is not disabled, without considering the person's age, education and work experience.

(3) If a person has an impairment(s) that is described in the Listing or has one or more impairments medically equal to one of the listed impairments (and meets the duration requirement) and is not actually engaging in substantial gainful activity, we determine, without considering his or her age, education and work experience, that the person is disabled.

(4) If a person has a severe impairment which does not meet or medically equal any of the listed impairments and is not actually doing substantial gainful activity, we evaluate the person's residual functional capacity and consider the physical and mental demands of his or her past work. If we find that the person can do his or her past work, we determine that the person is not disabled.

(5) If a person cannot do any work that he or she did in the past because of a severe impairment(s), but has the remaining physical and mental capacities to meet the demands of other jobs that exist in significant numbers in the national economy, we determine that the person is not disabled. To make this determination, we consider, in addition to the impairment(s), the person's age, education, and work experience, including the presence of any acquired work skills that can be transferred to other jobs. If, however, the person's physical or mental capacities, together with the factors of age, education, and work experience, do not permit an adjustment to work different from work the person did in the past, we determine that the person is disabled.

Consultative Examinations

When necessary, we obtain additional medical findings to resolve the issue of medical severity. We obtain these medical findings by the use of consultative medical examiners at no expense to the applicant. It is not practicable, however, to obtain some types of findings by such a medical examination, either because hospitalization is required or because it is questionable whether an individual should be required to undergo a highly specialized procedure for the sole purpose of disability evaluation. However, many tests of this type are frequently used during the ordinary course of medical treatment and, when available, are of great value in the evaluation of disability. Therefore, while several tests of this type are mentioned in the medical criteria, in each case they are accompanied by a statement that they should be obtained independently of the Social Security disability evaluation process since we will accept this evidence, if available, but will not request that an individual undergo those tests.

Study of the Disability Program

On June 7, 1983, the Secretary announced a top-to-bottom review of all disability program standards and procedures in connection with the critical problems occurring in the continuing disability review. She called for a reevaluation of a number of long-time policies, procedures, and issues with the assistance of appropriate experts. She gave particular attention to updating eligibility criteria involving all medical impairments but especially mental impairments.

On April 13, 1984, the Secretary further announced a suspension of the periodic review process until new disability legislation is enacted and can be effectively implemented. She also re-affirmed her commitment to reform the disability program and to re-establish uniform national disability evaluation standards to eliminate the confusion resulting from differing court orders and State actions.

The Social Security Administration (SSA) has already begun such a review and is accelerating its reassessment of the medical standards for determining disability with help from outside experts from the various States and from the medical and psychiatric fields in general.

Along these lines, SSA has held several meetings to obtain the views of psychiatrists, psychologists, and other professionals involved in the evaluation of mental impairments. These meetings were for the purpose of revising the standards used for determining disability in cases of mental disorders. Based upon the recommendations of the experts, we proposed substantial revisions in the listing of impairments for mental disorders. A Notice of Proposed Rule Making was published in the **Federal Register** (50 FR 4948) on February 4, 1985. After carefully considering all the comments we received, final rules were published in the **Federal Register** (50 FR 35038) on August 28, 1985. As a result of the top-to-bottom review of the mental

impairment criteria in the Listing, the final rules made substantial revision in the "12.00 Mental Disorders" criteria.

Although these final regulations make some changes in SSA's standards for determining disability in cases involving cardiovascular disorders, we have also initiated procedures which will lead to future rulemaking concerning cardiovascular impairments. We have solicited the help of the American Medical Association and other outside experts to serve as members of a Cardiovascular Panel. This panel of medical experts and SSA policy staff has already met three times and will be meeting again to do a comprehensive review of all our cardiovascular standards. The panel is giving particular emphasis to developing further revised criteria that will be consistent with the most recent medically accepted practices. These final rules do not reflect the work of the cardiovascular panel.

When our review is completed, the proposed revised criteria will be published in the **Federal Register** as a notice of proposed rulemaking to give the public an opportunity to comment on them. Similar reviews of our criteria in the Listing of Impairments for evaluating impairments in other body systems will also be initiated.

Also, in response to the Secretary's directives in reevaluating the disability criteria, we set up several workgroups to examine specific problem areas in the disability program. One of these work groups carefully examined the proposed regulations published in the **Federal Register** (47 FR 19620) on May 6, 1982, to determine whether these proposed regulations should be wholly or partially adopted. After considering the public comments along with the Secretary's directives, this workgroup decided that some of the initial proposals should not be adopted or should be studied further to assess their overall impact on disability evaluation before they are again considered for inclusion in the regulations. This reevaluation will also give SSA the opportunity to obtain outside consultation on these as well as other important medical criteria issues. Of course, any future changes considered will be published in the **Federal Register** as a notice of proposed rulemaking to give the public an opportunity to comment on any proposed changes.

In line with this initiative, certain of the proposed revisions that proved especially controversial will not be implemented at this time. The proposed revision of the listing for obesity, 10.10, was one of the most controversial. The proposed revision incorporated a table of weights that were approximately 100 percent above the average weights for specific heights for men and women. This was to replace a table with lower weights, but which required not only that the person meet the weight requirement, but also there be evidence of complications of obesity, such as an impairment in the respiratory, cardiovascular, or musculoskeletal system.

Extensive comments were received stating that the higher weights in the proposed listing represented an unwarranted restriction that would exclude many disabled individuals. In contrast, other comments stated that weight alone should not serve as a basis for finding disability. The new table will not be implemented at this time. However, modifications to the table in paragraph E of the existing listing were necessary to ensure consistency with the revisions in the respiratory body system (i.e., tables IIIA, IIIB, and IIIC in listing 3.02C1). The new tables in paragraph E recognize the influence of air pressure differences, because of elevation, on the tests of gas exchange. Separate tables are provided based on the elevation at which the test is performed.

With regard to the listing for obesity, we will continue to study case experience with the intent of providing a future revision that will be more specific than the approach in the current listing.

A revision we had proposed in 1.10C will not be made. This section discusses complications following a leg amputation that can affect the capacity to walk effectvely with an artificial leg. A primary consideration is that the complication must prevent walking without the aid of an assistive device. The proposed revision stated that the devices intended are those that provide support to both arms or both shoulders, as contrasted to one arm assistance such as is provided by a cane. This section will remain unchanged. Retaining the present criteria will preclude any possibility that applicants may not receive full consideration under this listing because they are using a cane rather than assistive devices that support both arms or both shoulders.

As a result of this general review, technical changes were also made in the proposed listing for arthritis of the major weight-bearing joints (1.03). The first sentence of this listing states there must be persistent stiffness in the affected joint. Stiffness, however, is not broad enough to cover the abnormal motions that can occur in a joint severely affected by arthritis. Therefore, the phrase "marked limitation of motion or abnormal motion" has been substituted. This will allow the consideration of some persons under this listing that would be excluded using the current language.

The proposed revision to the hearing impairment listing (102.08) in Part B of the Appendix, which applies to children under age 18, will not be implemented. The hearing criteria are less stringent for children than adults since an impairment of hearing at an early age may result in a severe speech and language disorder. The current listing applies a more lenient requirement for both children under age 5 and those above. The proposed revision would have raised the requirement for children 5 years of age and older to correspond to that required for adults. This proposal was based on the assumption that at this age any accompanying speech and language disorder could be adequately assessed. Pending further study and consideration, however, the current criteria will be retained.

In addition, in selected sections of the listing the word "severe" has been eliminated where it might be misinterpreted and other terms substituted. This has been done because of the special meaning of this word in the disability evaluation of persons who do not meet or equal the severity of a listing. As used in that phase of evaluation, "severe" means that an impairment is at a level that interferes with some work-related functions, and thus the person's vocational background must be considered in evaluation. This is unrelated to the use of "severe" in the listings, and the deletion of "severe" will prevent an interpretation that there is a relationship.

A careful review has been made of other proposed revisions that were criticized as being too stringent or restrictive, and we believe that the remaining revisions are fully justified in view of current medical treatment.

Amendments

We are revising the medical criteria for 11 of 13 body system listings in Part A of Appendix 1. We are making numerous revisions and a major reorganization of the respiratory system listing. In Part B of Appendix 1 we are revising seven body system listings. However, the background explanations and the listed impairments for all the body system listings in both Part A (except the mental disorders section) and Part B of Appendix 1 are being shown in full to provide a more complete explanation of each system listing, to show the relation of the medical evaluation criteria, and to give the public a better understanding of the

Listing in general and the purposes of the changes.

The medical input for these revisions was supplied by three groups of physicians. The revisions were initially proposed by the Medical Consultant Staff of the Office of Disability, whose members represent all medical specialties. Conferences were then held with other physicians employed by Social Security Regional Offices and Disability Determination Services, the State agencies that make disability determinations for us. After a preliminary consensus was reached, the revisions were then submitted for comment to all Social Security Administration Regional Office and State Disability Determination Services medical staffs, which resulted in further modifications. We also consulted with medical sources outside the Social Security Administration and considered a wide range of public comments.

In the Listing of Impairments, the listings under each separate body system in both Part A and Part B will be effective for periods ranging from 4 to 8 years. Medical advancements in disability evaluation and treatment and program experience require that these listings be periodically reviewed and updated. Specifically, the body system listings in the Listing of Impairments will be subject to the following termination dates:

Musculoskeletal System (1.00) within 5 years. Consequently, the listings in this body system will no longer be effective on December 6, 1990.

Respiratory System (3.00) within 6 years. Consequently, the listings in this body system will no longer be effective on December 6, 1991.

Cardiovascular System (4.00) within 4 years. Consequently, the listings in this body system will no longer be effective on December 6, 1989.

All other body systems listings, except for Mental Disorders, within 8 years. Consequently, the listings in those body systems will no longer be effective on December 6, 1993. (The Mental Disorders listings (12.00) in Part A will expire on August 27, 1988, in accordance with regulations published in the Federal Register (50 FR 35038) on August 28, 1985.

We intend to carefully monitor these listings over the period prescribed for each body system to ensure that they continue to meet program purposes. When changes are found to be warranted, the listings for that body system will be updated in the Federal Register again. Therefore, during the periods ranging from 4 to 8 years after the date of publication of these final rules, the listings under each body system will cease to be effective on the specified dates unless extended or revised and promulgated again.

Following is a summary of the changes in each of the body system listings being revised, including changes in the prefaces that introduce each body system listing and explain how the Listing is used in connection with the specific body system.

Revisions to Part A of Appendix 1

1.00 Musculoskeletal System

Listing 1.02, which provides findings for the evaluation of rheumatoid arthritis, refers to joint changes that are found in severe, active arthritis. There has been some misunderstanding as to which joints this listing applies. To clarify this, section A of this listing is being revised by inserting the word "major" before the word "joints." This addition makes it clear that this listing would not be met by the involvement of isolated small joints of the hands or feet. Wording is also being added to make it clear that the joints that are affected must show significant restriction of function.

Section B of this listing gives findings that confirm the diagnosis of rheumatoid arthritis. A fourth finding is being added: a biopsy report showing tissue changes characteristic of rheumatoid arthritis. This finding has not been included in this listing for several years because it is not obtained by treating physicians as frequently as the others cited, and when it is included in medical reports, in most cases other findings in the current listing are also reported. Its inclusion will, however, expedite the disability determination in the event a biopsy report is the only confirming finding reported in a particular case.

Section B of Listing 1.03, which provides findings to evaluate arthritis of the hip, specifies a condition in which the hip becomes fixed at an unfavorable angle. This section is being deleted since findings showing the fixation of a hip at an unfavorable angle are seldom reported and may not properly reflect the required level of severity intended by the listings.

Hip impairments caused by arthritis will be evaluated under section A of the Listing, which provides medical descriptions that are more often associated with severe limitations of standing and walking because of a hip impairment.

A revision is also being made in section A. Specific reference to hip and knee joints is being added to the current statement, which can otherwise be interpreted to include the ankle joint. This change is necessary because the condition described in this section, when it occurs in the ankle, does not produce a level of impairment comparable to that produced in the hip or knee.

Listing 1.04 provides medical findings that establish a disabling impairment of the upper extremities, including the shoulder joints, because of arthritis. One requirement is a finding of joint enlargement or effusion. This requirement was previously located in the heading of this listing, which indicated that it pertained to both sections A and B of the listing. For shoulder joints, however, joint enlargement or effusion cannot be reliably detected by physical examination. Therefore, this requirement is being removed from the heading of this listing and is being placed in section B. Gross anatomical deformities of the shoulder can be evaluated under section B, however, if joint enlargement or effusion is documented.

Listing 1.08 provides findings for osteomyelitis. These findings are equally valid for another condition, septic arthritis, and the title of this listing is being expanded to include both conditions. Also, one of the medical signs of osteomyelitis, drainage, is being deleted from this listing, because it has been found to be a less reliable finding for evaluation than the others cited.

The term "mobility restrictions" in Listing 1.10C.4 is being clarified by language stating the restrictions intended relate to walking and standing.

2.00 Special Senses and Speech

Section 2.00 is an introductory section that includes general principles to be used in the listings that concern loss of sight, hearing and speech. A new paragraph is being added to Section A to explain the technical specifications for the Goldmann perimeter, a commonly used method of measuring one aspect of vision. The word "spectacle" has been entered in the first paragraph of section 2.00A.3. This is to indicate that contact lenses may be worn during the performance of the visual test described.

3.00 Respiratory System

Extensive changes are being made in this system, both in the introduction and the listings themselves. A number of evaluation revisions are being made. In addition, there is a reorganization in order to make the presentation easier for disability evaluators to use. This is especially important in this system because many of the listings are interrelated by their mutual dependence

on tables that give values for breathing tests. In view of the extensive changes, this system is completely rewritten.

The major revisions of the introduction, section 3.00, are as follows:

Section A of 3.00 is expanded to give a detailed discussion of the approach to the evaluation of respiratory diseases. This includes a discussion of how disability occurs because of lung diseases, and the place of breathing tests and tests of gas exchange (exchange between the lungs and blood) in the evaluation of disability.

Section B is expanded to include the evaluation approach to most of the lung infections that are of concern for disability evaluation. Previously, this section was confined to a discussion of one general type of lung infection, which is caused by mycobacteria, primarily tuberculosis. The revision applies the same evaluation approach to conditions caused by mycotic organisms. The course of these two types of infections and their response to treatment do not justify separate principles of evaluation.

Section D concerns the use of breathing tests in the evaluation of disability. The title of this section is changed to more accurately describe its content from "Documentation of pulmonary insufficiency" to "Documentation of ventilatory function tests." A sentence is added to the second paragraph of this section to specify that height, which is used in tests of breathing to predict normal values, should be measured without shoes. Another change in this paragraph provides a highly technical addition that describes the calibration of units of volume on equipment that records breathing function.

A new section, section E, is added to the introduction. This section gives a more complete explanation of the use of tests that determine the adequacy of the exchange of gases between the lungs and blood. It also gives a more complete discussion of the place of these tests in disability evaluation. This includes the evidence that should be obtained before resorting to this type of testing. This is an important consideration because the tests are highly specialized and expensive and should be used only in the small percentage of cases in which they are essential.

Numerous changes are also being made in the listings for specific lung diseases.

Listing 3.02, which currently gives criteria for one type of lung condition, is expanded to include evaluation of the various types of lung conditions that result in permanent impairment of breathing or of the capacity to exchange gases between the lungs and blood. This will simplify the cross referencing of different listings that are based, in part, on these tests and will give a more unified presentation of how the values obtained from breathing tests relate to evaluation.

In addition to this basic reorganization, a number of technical changes are included in the revised listing. Table 1, the table for chronic obstructive pulmonary disease, contains technical adjustments to make the two values used in this table more consistent. Revision of the values is also being made to make them more accurate for taller individuals.

Listing 3.02B includes the evaluation of spinal curvatures that diminish breathing. An addition to this listing specifies that when the spine is deformed to the extent that it distorts height, arm span should be substituted for height in interpreting the results of breathing tests.

The data for the measurement of gas exchange in Listing 3.02C are expanded to include values for testing during controlled exercise. Another revision in this section will recognize the influence of air pressure differences, because of elevation, on the tests of gas exchange. Separate tables are provided based on the elevation at which the test is performed.

Listing 3.03 provides for the evaluation of chronic asthma by giving criteria for the frequency of attacks, their severity, and the presence of remaining symptoms between severe attacks. Language is added to the last sentence of section B of this listing to emphasize that findings between attacks must be documented by medical examinations.

A significant change is being made in Listing 3.09, the listing that gives criteria for mycotic lung infections. Previously, this type of infection was evaluated by findings indicating continuing infection. The change provides for evaluation of the permanent lung damage caused by the disease after the acute infection is past. This revision is based on changing treatment which makes it improbable that this condition will meet the 12-month duration required for a finding of disability. (However, an evaluation approach to rare cases of prolonged infection is contained in section 3.00B.)

Listing 3.12, the listing for fistulas that arise from the pleura, or covering of the lung, was deleted. It is now obsolete because of surgical and medical treatment. Fistulas of this type are now often of short duration or, if prolonged, are improved to the extent that they do not reflect the severity intended when this listing was first published. The existing listings now provide for adequate evaluation of fistulas on the basis of the primary medical conditions that cause them.

4.00 Cardiovascular System

Section 4.00 is an introduction to the listings for heart conditions and other vascular diseases. Several items in this introduction are changed. The fourth paragraph of subsection F.1 is revised to make it clear that descriptions of electrocardiograms are not sufficient for disability evaluation, and that a copy of the electrocardiogram must also be submitted.

A sentence is added after the second sentence of the first paragraph of subsection F.2 to explain that a type of electrocardiogram reading, called a posthyperventilation tracing, may be essential to evaluate people with certain medical conditions.

The following segment was deleted from the first sentence of subsection G.2 of this introduction: "as typified by the Bruce protocol." This protocol, a well-known procedure used in treadmill testing for heart conditions, was used as an example. The increasing use of treadmill exercise tests in the medical management of heart conditions now makes this example unnecessary.

The first paragraph of subsection G.3 lists conditions in which treadmill exercise testing should not be obtained for the evaluation of heart disease, in most cases because of the potential hazard. Another situation, involving the recent onset of chest pains that are considered to be caused by a heart condition, is added to the first paragraph. This is widely recognized by physicians as a reason for delaying this type of testing.

A sentence is added at the end of section I in recognition of the increasing use of echocardiography, a method of determining the characteristics of heart conditions. This sentence points out that this method may not be a conclusive test for specific heart conditions.

Another addition to this introductory section concerns vascular disease of the legs rather than heart disease. This addition, section K, gives background material on how a medical technique (Doppler study) is used for the measurement of the adequacy of blood circulation in the legs.

Section A of Listing 4.04 contains technical requirements for findings obtained from electrocardiograms made during exercise. Two revisions to the section are being made—one in item 1, another in item 2. Both concern one aspect of an electrocardiogram, called the ST segment. The first revision provides more detail on the

measurement of this aspect of the electrocardiogram; the second adds an additional characteristic of this measurement that can verify an abnormality of heart function. Listing 4.04 is also being revised by adding in section B evidence obtained by the radio-isotopic method, a method that is being increasingly used by physicians to determine the characteristics of heart abnormalities. In the notice of proposed rulemaking, this revision was made in section D, which is now being eliminated.

The title of Listing 4.13 is changed to "Peripheral arterial disease." This replaces a title that cited two common conditions that often produce severe impairment because of decreased functioning of the arteries in the legs. The new title makes it clear that evaluation under this listing is not restricted to conditions with these two specific diagnoses. Section B of Listing 4.13 concerns testing the adequacy of blood flow in the legs by using a technique (Doppler study) that detects blood flow by sound waves. The required values from this test, which are now contained in supplemental instructions, are being included in the listing.

5.00 Digestive System

Section A of Listing 5.05 gives one of several findings used to confirm advanced, chronic liver disease. This is based on bleeding from lesions (varices) that are caused by liver disease. While this is usually a good indicator of disabling liver disease, in some cases prolonged periods of improvement can occur after bleeding of this type. Therefore, this section is revised to state that when bleeding has not occurred for 3 years at the time disability is being considered, this factor alone will not be used to establish that liver disease is disabling. A similar change has been made in section B of this listing. In this case, the need for surgery for these lesions caused by liver disease is used as a measure of the severity of the condition. The same 3-year statement is added because in some cases prolonged improvement occurs after this surgery.

Section 5.05F.1 uses a finding of fluid accumulation in the abdomen in combination with evidence from a liver biopsy. A new section, D, allows this finding to be used in the absence of liver biopsy, and substitutes for equivalent meaning a requirement that the fluid accumulation must be present for a longer period of time than is required when a liver biopsy has been obtained. In the same listing, the phrase "for at least 3 months" is added at the end of subsection 2 of section F. This corrects a printing omission made during a prior revision.

Listing 5.08 uses extreme weight loss as a measure of the severity of diseases of the intestines and other organs of the gastrointestinal system. Language is added to the heading of this listing to emphasize that the weight loss must be persistent. This addition is needed to prevent this listing from being applied to gastrointestinal conditions which, though severe, are subject to definite improvement over a period of less than 12 months.

7.00 Hemic and Lymphatic System

Section 7.00 is an introduction to the listings for blood diseases. A sentence is being added to section E, the part of this introduction that concerns the evaluation approach to acute leukemia. This addition specifies that a phase of one type of chronic leukemia should be evaluated in the same manner as acute leukemia. This is necessary because the usual course for this phase of chornic leukemia is similar to that for acute leukemia.

An additional finding showing chronic anemia is added to the listing for sickle cell disease. This measure of chronic anemia, added as section C of Listing 7.05, is already included in the listing for sickle cell disease for children under 18 in Part B. Its inclusion in the adult listing will facilitate proper decisions for adults with this condition.

Listing 7.12, the listing for chronic leukemia, retains the same wording, but the concluding references to other listings are being changed, with the addition of references to Listings 7.11 and 7.17. This is made necessary by the addition of another listing, 7.17, and the additional consideration of one phase of chronic leukemia discussed in the explanation of the change in section 7.00E. See the explanation of the revision of section 7.00E and Listing 7.17 for a further understanding of the purpose of the additional references.

Listing 7.16 provides findings for a type of bone tumor that produces changes in the blood. Reference to pathological bone fracture, fractures which occur without definite trauma, has been removed from section A of the listing. Another listing, 1.11, gives more accurate criteria for this condition than provided in this listing.

A new listing, 7.17, is added to recognize the treatment of severe anemias and blood malignancies by the transplantation of bone marrow. It provides for consideration of the improvement that occurs in many cases after this method of treatment.

9.00 Endocrine System

One word is changed in section C of Listing 9.08, the listing for diabetes mellitus. The word "vascular" is replaced with "arterial," because this condition is caused by disease of the arterial system in the legs rather than in the veins of the legs.

10.00 Multiple Body Systems

As previously explained, under the subheading "Study of the Disability Program" in this preamble, the revisions which we had proposed to make to the Multiple Body Systems are not being made. However, for the reason given in that section of this preamble, the table in paragraph E of Listing 10.10 is being modified.

11.00 Neurological

Section 11.00 is an introduction to the listings for the evaluation of neurological impairments. Item A of this introduction includes the approach to the evaluation of epilepsy. Additional language added to the third paragraph specifies that a medical test (determination of drug levels in the blood serum) must be considered in determining whether prescribed medication for seizures is being taken. This revision is necessary because of the increasing ability to control seizures by using proper drug therapy regimens. Item B of this introduction concerns brain tumors, which often cause disability by affecting the nervous system. A change in the first sentence of section B of this introduction points out that the diagnosis and persistence of brain tumors should be determined before applying the findings in the neurological listings. The listings used to evaluate brain tumor provide only decriptions of signs, symptoms and findings. These descriptions cannot be used without consideration of the specific type of tumor involved, because characteristics of these tumors vary. Some respond rapidly to surgery or other treatment and the neurological findings in the listings may in some cases be temporary. A change is also being made in the last sentence of section B of the introduction. The word "benign" is removed from before the word "tumor." For certain brain tumors, the distinction between benign and malignant tumors may be controversial, but the distinction is not important for the proper use of the listing.

After we consulted with an organization concerned with multiple sclerosis, we are making several changes for the evaluation of that disease. A new 11.00E has been added to the preface to describe the criteria;

for evaluating multiple sclerosis found in listing 11.09. And a new paragraph "C," has been added to listing 11.09, to provide criteria for evaluating the impairment of individuals who do not have muscle weakness or other significant disorganization of motor function at rest, but who do develop muscle weakness on activity as a result of fatigue.

12.00 Mental Disorders

Since the Notice of Proposed Rule Making pertaining to these revisions of the Listing of Impairments in general was published on May 6, 1982 (47 FR 19620), Pub. L. 98–460 was enacted on October 9, 1984. Section 5 of this law requires the Secretary to revise the criteria embodied under the category "Mental Disorders" in the Listing of Impairments in effect on the date of the enactment of Pub. L. 98–460. On February 4, 1985, a complete revision of the mental disorder listings contained in 12.00 of the Listing of Impairments was published in the **Federal Register** (50 FR 4948) as proposed amendments along with a Notice of Proposed Rule Making providing for a 45 day comment period ending on March 21, 1985. Interested persons, organizations, and groups were invited to submit data, views, or arguments pertaining to those proposed amendments during the 45-day comment period. Careful consideration was given to all the comments submitted, and final rules to the 12.00 Mental Disorders of the Listing of Impairments were published in the **Federal Register** (50 FR 35038) on August 28, 1985.

13.00 Neoplastic Diseases

Several changes are being made in section C of the introduction to the listings for the evaluation of neoplastic diseases. In the first and fourth paragraphs, wording changes are being made that do not change the substance. An added fifth paragraph states that the neoplastic listings do not apply in cases where the original tumor and any spread from it have disappeared for 3 or more years. Although the conditions described in these listings are those in which improvement is unlikely, varying responses to therapies make this time qualification necessary.

Listing 13.03 is being revised to ensure there will be no misunderstanding of the extent of tumor spread that is intended. The reference to lymph nodes in section B is replaced with a reference to the specific nodes intended—the regional lymph nodes. Similar changes are made in Listings 13.21C, 13.22B, and 13.28B.

Listing 13–13, which provides for the evaluation of malignant lung tumors, is being revised to reflect current medical knowledge about the expected course of different types of lung tumors. Sections D and E of this listing provide different standards based on the extent of tumor spread, depending on the type of tumor shown by cell examination.

Section A of Listing 13.16 previously provided different standards for tumors of the esophagus, depending on the location of the tumors, with evidence of greater tumor spread being required for those located in the lower part of the esophagus. The revision eliminates the separate requirement. Program and general medical experience have not shown that there are sufficient differences in the course of these tumors to justify a requirement of greater spread for tumors located in the lower part of the esophagus.

The requirement in Listing 13.19, section C, for one type of tumor of the bile ducts is being revised. Evidence of the extension of this tumor from the original location is no longer being required. This is based on additional medical data showing the usual course of tumors in this area.

In Listing 13.21, a change is also being made in section B to specify the type of tumor spread required.

Two additional listings are provided for this body system: 13.29, which gives evaluation criteria for one type of malignant tumor of the penis; and 13.30, which gives criteria for the vulva. The requirements for both are based on the expected course of these conditions, considering available treatment.

Revisions to Part B of Appendix 1

101.00 Musculoskeletal System

Listing 101.02 gives findings for children with rheumatoid arthritis. Section A of this listing formerly specified that signs of joint inflammation must persist or recur despite 6 months of medical treatment. This period is changed to 3 months, the period now specified for the comparable adult listing, which is sufficient time to establish a chronic condition for the purpose of disability evaluation.

102.00 Special Senses and Speech

As previously explained under the subheading "Study of the Disability Program" in the preamble, the revisions which we had proposed to make to the Special Senses and Speech listings are not being made.

106.00 Genito-Urinary System

Listing 106.02 provides laboratory values for the evaluation of chronic kidney disease in children. We eliminated use of BUN findings because creatinine findings are more reliable for assessing severity of chronic kidney disease. We also made the creatinine clearance valves more restrictive and added a 3-month duration requirement to ensure against erroneous allowances for children who have acute illness which is not expected to persist for 12 months.

112.00 Mental and Emotional Disorders

The name of the well-known intelligence test (Wechsler Intelligence Scale for Children) referred to in this preface is being changed to show the name for the lastest version of this test (Wechsler Intelligence Scale for Children-Revised).

113.00 Neoplastic Diseases, Malignant

Listing 113.02 provides medical criteria for malignant tumors that involve the lymph system. Section A of this listing is being revised to provide separate criteria for Hodgkin's disease. The revision states that Hodgkin's disease must be shown to be progressive and uncontrolled by prescribed therapy. General medical experience over the past several years has shown increasingly successful treatment of this condition.

Public Comments

Subsequent to the publication of the notice of proposed rulemaking in the **Federal Register** (47 FR 19620) on May 6, 1982, we mailed copies to State agencies, national organizations and other parties interested in the administration of the title II and title XVI disability programs. As part of our outreach efforts, we invited comments from State disability determination services, national organizations representative of disabled persons, their advocates, and service providers. We also invited comments from various health and medical associations as well as from law and legal service organizations. We received over 500 comments pertaining to specific changes which we had proposed. Some commenters addressed a large number of issues pertaining to changes under many different body systems. The majority of comments were from people and organizations whose responsibilities and interests require them to have some expertise in the evaluation of impairments. Many were from sources with specialized medical background. Most of the comments we received concerned the specific evaluation criteria for particular impairments contained in the Listing of Impairments.

We have carefully considered all the comments and have adopted some of the recommendations. These changes are identified in the following discussion of issues which were raised in the comments.

Except for those comments pertaining to the Listing in general, we discuss these comments under the appropriate body system headings. Many of the written comments we received necessarily had to be condensed, summarized, or paraphrased. However, we attempted to express everyone's views adequately and to respond to the issues raised.

Part A of Appendix 1

1. Musculoskeletal System

Comment: Comments from a professional organization question how Listing 1.02 provides for the evaluation of seronegative forms of inflammatory arthritis.

Response: The title of this listing, by the use of the wording ". . . and other inflammatory arthritis," indicates active inflammatory arthritis from any cause can be evaluated under this listing. The laboratory findings in part B of this listing do not relate only to rheumatoid arthritis characterized by laboratory findings related to the presence of typical antibodies. The sedimentation rate is often elevated in other types of arthritis and serves to meet this listing. When the sedimentation rate is not elevated and the signs of severe joint inflammation described in part A are present, findings that confirm one of the many disease processes that can be the cause are used to establish disability on the basis that the condition is equal to the severity of this listing.

Comment: A professional society commented that a specific value should be stated for the serologic test cited in part B of Listing 1.02.

Response: We currently specify only that this test must be positive for the rheumatoid factor. In view of the relationship of this test with part A of the listing, we do not believe a more stringent requirement is necessary. Part A of this listing requires persistent signs of severe joint inflammation. When these inflammatory signs are present, a positive serologic test gives adequate confirmation of active arthritis.

Comment: A comment from a professional medical organization suggested that Listing 1.03 should contain a reference to "persistent disabling, measurable weakness or dysfunction."

Response: The current language in this listing, by referring to limitations of standing and walking, accomplishes the same purpose as the language suggested in this comment.

Comment: Comments from a department of State government observed that certain general statements, such as "severely limiting ability to walk and stand" in 1.03, could prove difficult to apply. This commenter concedes, however, that it is questionable whether more precise definitions can be provided in these instances. Several other commenters also questioned these statements.

Response: It is our goal to provide listings that are as precise as possible. For certain conditions, however, the medical findings must be supplemented by statements of function in order to express the level of severity intended for the condition.

Comment: A department of a State government stated that the changes in Listing 1.02, 1.03, and 1.10 will result in the denial of persons with disabling conditions. Another comment on Listing 1.03 stated that this listing gives no emphasis to multiple finger joint disability.

Response: The change in 1.02A should cause no change in a finding of disability as compared to the former requirements. This change only clarifies that inflammation in multiple finger joints (which could be as few as two joints on one hand) does not meet this part of the listing. It is rare for a person with findings of active rheumatoid joint inflammation to have inflammation confined to a few finger joints. If this should occur, however, it is not consistent with the level of generalized joint involvement intended by this section. Finger inflammation, without the similar involvement of the larger joints, can constitute a disabling impairment, but the determination in this case requires consideration of the number and location of the finger joints involved in the individual case.

The revision in 1.02B4 makes no change in the severity requirements. It merely adds another test that can be used to verify active arthritis. All the prior tests have been retained and only one must be met.

The change in 1.03 that eliminates arthritis of the ankle as a consideration may have a small impact on the number of individuals who meet the criteria of this listing. This is justified, however, because arthritis in the ankle joint does not result in the extent of loss of function as arthritis in the hip or knee. These cases must be evaluated individually to determine the degree of impairment in each case.

We do not believe this revision of 1.10C would have had a significant impact on the number of individuals who would have been allowed benefits under this listing. Usually, complications that prevent the effective use of the lower limb prosthesis result in a gait impairment that requires more support than that provided by a cane. As previously stated under the subheading "Study of the Disability Program" in this preamble, however, this proposed revision is not being implemented. The primary focus of this listing is, in any case, on the severity of the complication that prevents effective ambulation with a prosthesis. Retaining the present criteria will preclude any possibility that applicants may not receive full consideration under this listing because they are using a cane rather than assistive devices that support both shoulders.

Comment: One commenter stated that the requirement for sensory and motor "loss" in the listing for spinal disorders, 1.05, could be interpreted to mean a total loss, which seldom occurs in these conditions.

Response: This language has been used for many years, and such an interpretation has not surfaced. the extreme rarity of total motor loss due to this condition makes this interpretation unlikely.

Comment: Another comment, concerning sections 1.00B and 1.05B1, states that the amount of disability in spinal conditions does not clearly correlate with the percentage of compression.

Response: Section 1.00B does not discuss disability in terms of compression. Section 1.05B1 does cite loss of height of a vertebral body in association with compression fractures. However, this is used as one of the findings to confirm severe osteoporosis, not as the primary finding that shows the severity of the impairment. This loss of height must be associated with a spontaneous compression fracture.

Comment: A comment from a professional medical association concerned the statement in Listing 1.08 which specifies that at least two acute episodes of osteomyelitis must have occurred in the 5 months before adjudication. The comment questions whether it is realistic to consider osteomyelitis to be chronic until it has persisted for 6 months.

Reponse: The purpose of this part of the listing is to establish criteria that give a reasonable likelihood that the impairment will persist. Whether the period of activity is 5 months or 6 months is necessarily somewhat indefinite and either period would result in essentially the same cases being found to meet this listing. In any event,

this listing requires a medical judgment that the condition is expected to last for at least 12 months.

Comment: A legal assistance group stated that the change in the listing for osteomyelitis (1.08) would be detrimental to persons now receiving benefits and should be applied for current claims, but not retroactively.

Response: No revision will be applied retroactively in the sense that a past determination will be reexamined and reversed. The only change in this listing is the deletion of one of the signs of active osteomyelitis, i.e., drainage.

Other signs and findings—heat, redness, swelling, leucocytosis, or increased sedimentation rate—are retained. If upon current examination these are not present, there is considered to be no basis for a finding of disability due to active osteomyelitis. The deletion of drainage was to eliminate under this listing consideration of a small number of cases in which there continued to be occasional episodes of minimal drainage from a previous site of active osteomyelitis. It should also be noted that this listing pertains only to the limitations resulting from active infection. Osteomyelitis can also result in permanet musculoskeletal damage. Impairments from this type of damage are evaluated separately.

Comment: A comment on the listing for leg amputation (1.10) proposed that this listing should also refer to complications of amputation that require the use of a wheelchair.

Response: This listing requires that the complications from a single leg amputation must be sufficiently severe to require the use of obligatory assistive devices such as crutches or a walker. We have not adopted the suggested change because we are aware that complications requiring a wheelchair or necessitating bed confinement are even more severe and would meet the requirements of this listing.

Comment: A professional association concerned with physical medicine and rehabilitation suggested that the evaluation of disorders of the spine should include a requirement that the condition must persist despite comprehensive rehabilitation management.

Response: The requirement is that the listed abnormalities persist for at least 3 months despite prescribed therapy and are expected to last 12 months. This avoids having the administration prescribe a specific treatment for this complex condition. If the impairment improves because of comprehensive rehabilitation management, or other reasons, that improvement will be evaluated.

Comment: The organization in the preceding comment also suggested that the reference to "orthopedic" in the fourth paragraph of 1.00B should be changed to "musculoskeletal."

Response: We believe that the word musculoskeletal would be too vague. Orthopedic examination has a meaning that is generally understood by physicians and best describes the findings we require for these back disorders. The use of the word orthopedic is not meant to designate that an orthopedic specialist must supply the findings. Basic orthopedic findings are common to several medical specialties and internal medicine as well.

Comment: A legal services group commented that 10 substantive changes in the musculoskeletal system were not explained when the proposed rules were published and that these unexplained changes provide more restrictive requirements and thus violate the intent of the Administrative Procedure Act.

Response: All but five of these changes involve the addition of adjectives, such as the modification of "activity" by "clinical" in Listing 1.02. These changes do not alter the basic criteria of these listings.

The other changes are more significant. In Listing 1.02, the signs of rheumatoid inflammation of a joint no longer include "heat." This change does not introduce a more restrictive requirement, however, but rather facilitates determinations under this listing. Heat has been found to be an equivocal finding because it is difficult to detect with certainty on physical examinations and is not reported regularly. It was, therefore, deleted, and only two signs of joint inflammation, swelling and tenderness, are retained in the revision.

Another change in this listing is that joint inflammation must be present "on current physical examination." This does not introduce a new requirement, but emphasizes the intent of this listing, that is, that joint inflammation must persist for at least 3 months and until the time the determination is made, if that time is before 12 months from onset.

It was explained when the proposed rules were published that arthritis of the knees and hip was being combined in a single section of this listing, eliminating the separate section for arthritis of the hip joint. In this new section, x-ray evidence of joint changes characteristic of arthritis is required for either the hip or knee joint, while the prior listing required x-ray evidence for the hip joint but not the knee. We do not regard this as a requirement that makes this listing more restrictive. When the physical findings required by both the former and the revised listing (subluxation, contracture, ankylosis or instability of the knee joint) are present, it is expected that the x-ray findings described will also be present. The x-ray findings only ensure that the impairment is caused by permanent joint changes rather than a less serious or a temporary condition.

The other change in this listing is an addition that states that the joint changes described by the criteria must markedly limit the ability to walk and stand. This merely expresses the impact on physical capacity that is logically intended by this listing.

A change in section A of Listing 1.04 adds a requirement, and this should have been explained when the proposed rules were published. This addition will have little effect, however, on the percentage of persons who are allowed benefits under this listing. The basic purpose of the criteria in this section is to identify persons who cannot raise their arms high enough to perform work-related functions. The prior listing measures this by the inability to abduct the arms to 90 degrees, abduction meaning the arms are extended at the side of the body. The added requirement, forward flexion, retains the same degree of restriction, 90 degrees, but with the arms extended to the front. Requiring the measurement in both planes gives greater surety that the restriction is due to permanent joint changes resulting from arthritis, rather than from a less severe condition.

In Listing 1.08, the listing for osteomyelitis, the statement "expected to last 12 months" was added. This is only a restatement of the duration requirement found in the law. It was added to this listing, and several others, because we wished to emphasize the need to judge duration, since the impairment involved is one that would ordinarily be expected to improve within 12 months.

2. Special Senses and Speech

Comment: Comments from a professional organization pointed out that evidence from optometrists can be used to determine the extent of the loss of vision. This organization goes on to say that in the 2.00 and 102.00 sections references are made to "ophthalmology" or "ophthalmologic," which are words derived from a medical specialty practiced by medical doctors, and thus could be interpreted to mean that measurements of vision by optometrists are not acceptable.

Response: Reports of visual loss from optometrists are routinely accepted in our program, and the validity of these findings is acknowledged in the regulations (§ 404.1513) to which the Listing of Impairments is an appendix. We do not believe there can be any fair inference that this evidence is not acceptable; therefore, the title of 2.00A has not been changed. In this case "ophthalmology" best describes the material in this section. The reference to "ophthalmologic disorder" in section 102.00A (third paragraph) has been changed to "visual disorder," since the latter is clearly more logical.

Comment: The organization in the preceding comment also questioned, for the same reason, the use of the word "medical" at several points in these sections.

Response: The word "medical" is used in this section, and others, as an adjective in such terms as "medical evidence." It is used in a general sense and does not mean, nor do we believe it is generally interpreted to mean, evidence exclusively from medical doctors. There is no equivalent substitute for the word and it has been retained.

Comment: One commenter questioned the distinction made between spectacle lenses and contact lenses in section 2.00, asking whether it wouldn't be necessary to remove either type of lens during visual testing.

Response: This distinction is made for only one type of visual testing, the testing of the field of vision, that is, the extent of vision in all directions. While the spectacle lenses prevent proper evaluation of the peripheral part of this field, contact lenses do not and need not be removed.

Comment: A professional organization concerned with the neurological conditions pointed out that the type of test (perimetry) required by section 2.00A3 to determine the extent of visual fields is not necessary for a certain type of visual field loss (hemianopsia) that is of neurological origin.

Response: The type of visual testing described in section 2.00A3 is needed for the vast majority of cases in which visual field testing is obtained. The specific type of visual field loss to which this organization refers is found in only a small proportion of these claims. When this type of visual loss is present, it is likely that the condition causing the loss, such as a brain tumor, will be the focus of disability evaluation.

Comment: An organization representing persons with retinitis pigmentosa, a common cause of visual impairment, stated that the criteria should include consideration of another result of this condition: night blindness and the inability to see in dimly lit places.

Response: This does constitute an additional limitation for people with this condition. It is not the type of limitation, however, that is consistent with the purpose of the Listing of Impairments, which is to identify limitations that prevent all types of work. Since this limitation affects only certain types of work in particular environments, it is more appropriate to consider it in the vocational phase of evaluation, which is explained in this preamble in items 4 and 5 under the heading "How We Use the Listing."

Comment: A professional organization commented that a medical examination by a qualified otolaryngologist should be obtained for any case involving an impairment of hearing, speech, or balance. A similar comment from another organization stated that all communication problems should be evaluated by a speech-language pathologist and an audiologist.

Response: We have never specified that findings for these impairments must be from a particular medical specialty and continue to believe that this is a sound and economical approach. Medical conditions in the areas mentioned in this comment differ greatly in their complexity and completely persuasive evidence is sometimes obtained from treating practitioners who are not specialists in the field of otolarnygology. Every medical determination is reviewed by a physician, and when evidence in addition to that submitted by treating sources is needed, an examination is arranged with a practitioner whose qualifications are appropriate for the type of findings required.

Comment: The organization in the preceding comment also suggested that when speech is produced by the aid of a mechanical or electronic device, the need for manual operation of the device and other limitations of its use should be considered in the determination of disability.

Response: Although these limitations can be considered in the vocational phase of evaluation, as explained in this preamble under the heading "How We Use the Listing," they are not appropriate for the listings because they would interfere with the performance of certain types of jobs but may not cause severe limitation in the performance of many others.

Comment: An association pointed out that when certain types of eye movements are present, electronystagmography may be of little or no value.

Response: This test is cited in 2.00B2, which gives the general approach to the evaluation of Meniere's disease and similar conditions. While this comment is correct, this test is of value for many of these cases. There are variations in many medical conditions that diminish or negate the value of tests and findings that we cite throughout the listings in all body systems. Such situations must be identified by program physicians who evaluate disability cases, and the determination must be based on the evidence that is appropriate in the particular case.

Comment: A number of comments concerned technical specifications for the listings for hearing and speech impairments.

Response: The comments primarily concern the methods and conditions for tests of hearing and speech. These comments will be considered in future revisions of the Listing of Impairments, which will be submitted for public comment through notice of proposed rulemaking procedures.

3. Respiratory System

Comment: Two professional organizations commented that the appproach to respiratory conditions in the 3.00 section does not ensure that all severe cases will be identified. For example, a few individuals may have normal breathing tests and normal x-ray findings and yet have a severe impairment of gas exchange, an others may have impairments arising from pulmonary vascular disease or desquamative interstitial pneumonia that may not be detected. Another comment mentioned that the multiple effects of pulmonary disease are complex.

Response: The cardivascular listing provide consideration of some of the complicating features of pulmonary vascular disease. However, any structured approach to the complex area of pulmonary disease cannot completely encompass all situations. We believe that this section has been improved as a result of changes made on the basis of public comments. There is also versatility within this approach. Unusual cases can be allowed on the basis of equaling the severity of a listing, and the fact that physicians participate in all determinations ensures recognition of atypical cases. There are also established procedures for referring problem cases to specialists in pulmonary disease and pulmonary testing.

Comment: One contributor commented that it was unclear when ventilatory function tests that are

performed without bronchodilation can be used.

Response: The following passage in section 3.00D of the proposed rules published on May 6, 1982, concerns this issue: "These studies should be repeated after administration of a nebulized bronchodilator unless the prebronhodilator values are 80 percent or more of predicted normal values or the use of bronchodilators is contraindicated. The values in tables, I, II, and III assume that the ventilatory function studies were not performed in the presence of wheezing or other evidence of bronchospasm or, if these were present at the time of the examination, that the studies were repeated after administration of a bronchodilator."

The purpose of these studies is to determine loss of function due to permanent lung changes, as contrasted to that which can occur because of periodic constriction of the bronchial passages.

Tests submitted by treating physicians asre sometimes done without bronchodilation. When the values are 80 percent or more of normal, a severe impairment is not shown and there is no reason to repeat the test using bronchodilation. Moreover, even values below 80 percent of normal may not result in a finding of disability. In these cases, there is only a potential to obtain increased values. Since program experience has not shown a misunderstanding of this principle, the language in section 3.00D has not been expanded.

Comment: A division of a State government stated that although sections 3.00D and 103.00A both require that the reported FEV_1 represent the largest of at least three satisfactory attempts, section 103.00A also requires the reported FEV_1 to be within 10 percent of another FEV_1. They question why section 3.00D does not contain this latter requirement.

Response: We have found, upon review of the othe specifications and documentation requirements of sections 3.00D and 103.00A, that the additional requirement in seciton 103.00A is not obtainable. Therefore, the clause "and should be within 10 percent of another FEV_1" has been deleted from section 103.00A.

Comment: In response to the expanded material on the documentation of impairments of gas exchange in seciton 3.00E, several commenters believed that this expansion would lead to the development of this evidence in many more cases, increasing costs and processing time.

Response: The main purpose of this section is to describe the method of obtaining this evidence. This is preceded by a detailed discussion (3.00E1) of other evidence that should be obtained and evaluated before obtaining tests of gas exchange. This type of screening should ensure that documentation of gas exchange is obtained only in cases for which it is necessary.

Comment: In a similar comment, a professional society conserned with thoracic medicine emphasized that blood gas values should not be used for intial screening and suggested language to emphasize this point.

Response: We believe there is little basic difference between the language in section 3.00E1 and that suggested by this organization. We prefer the existing language in this section because it is more specific as to the actual tests that should be obtained before resorting to blood gas studies. One substantive difference in the society's language is the citation of tests of diffusing capacity. We do not emphasize tests of diffusing capacity because the results vary from laboratory to laboratory to a greater extent than blood gas studies.

Comment: The variability of the results of diffusion tests, referred to in the previous response, is related to another comment received from this society, which stated that the diffusion capacity value of 30 percent used in Listing 3.02 is too severe and recommended a value of 50 percent.

Response: In view of the variability of this test between laboratories, we believe this value must be set conservatively. If the value of 30 percent is obtained during the course of evaluation for treatment, we can use it as a basis to establish disability. If a higher value is submitted, it does not mean the claim is denied. The results of other tests are considered and additional tests are obtained if necessary.

Comment: Another comment recommended that the values for ventilatory tests in Listing 3.02 should be given in relation to the percent of predicted values, which would incorporate a person's age, sex, and, if necessary, body surface.

Response: An individual requires the ability for a certain amount of gas exchange in order to have sufficient air in the terminal portions of the lung from which to extract oxygen. This ability for gas exchange is most significantly affected by differences in height and this is taken into account in the criteria. The basic medical evaluation criteria in the Listing of Impairments are intended to provide a basic standard for accomplishment of a certain level of work. It is not based on the concept that individuals, merely because of their age or sex, are expected to function at a lower exertional level.

Comment: A department of a State government questioned the need to purchase arterial blood gas studies since they require insertion of an arterial line which represents an invasive procedure. They suggest that ear oximetry could be substituted for this test.

Response: We recognize that this is an invasive procedure and represents some risk. However, we feel it is necessary to obtain these studies in selected cases. Section 3.00E places safeguards so that the test will not be ordered if the decision can be made on some other basis or if there is an indication of some increased risk.

Ear oximetry is of value in certain clinical situations and, when reported to us by treating physicians, can be used in some cases to rule out severe impairments of gas exchange. This procedure is not cited in the listings, however, because the results obtained lack the precision needed for most cases in which the issue of gas exchange is material to evaluation.

Response: Another commenter expressed concern that some of the guides on obtaining pulmonary testing in section 3.00E might present technical problems. The elevation of the test site, in the view of this commenter, might not be simple to determine in all cases, and the statement in this section that evaluators should be alert to abnormally high barometric pressure at a test site, in cases in which blood gas values fall slightly above the table values, may be difficult to apply.

Response: If there is any question in determining the altitude or elevation of the test site, the laboratory performing the test should be contacted for this information. The problem of making determinations where the altitude falls near the cut-off point between two tables is inevitable in the establishment of any standard, particularly those using numbers. The applicable table should be the one used.

Abnormally high barometric pressure in combination with a borderline finding on one of the tables based on altitude will be a rare event, and its identification is necessarily dependent upon the judgment of the disability evaluator.

Comment: Another comment on the relation of test values to altitude stated that altitude is unimportant when a test value is below a certain baseline, and in line with this, questioned the accuracy of the PO_2 values used in the table for evaluations 6,000 feet above sea level.

Response: It is true that oxygen tensions below a certain baseline level would indicate a severe impairment, presumably at any altitude. However, altitude does make a great difference in the point at which an oxygen tension is considered to be abnormal. In establishing the current values, we have considered a wide consensus of both physicians in the disability program and outside it, including prior consultation with the association providing this comment. We believe the revised values based on altitude are consistent with the past values required at sea level.

Comment: Another commenter suggested that examples of conditions that may produce a restrictive ventilatory impairment should be cited in Listing 3.02B in the same manner as they were cited in the prior listing for this condition.

Response: The introductory section, 3.00A, now contains a discussion of the various conditions that can result in restrictive and obstructive impairments. We believe this consolidated approach is more useful than citing examples for individual listings.

Comment: One commenter questioned the symbols used for blood gases, noting that PaO_2 is used interchangeably with PO_2, as well as $PaCO_2$ with PCO_2. He also stated that PaO_2 is used twice in 3.02C2 whereas it should be used only once. In addition, he stated that in 3.02A the words "chronic obstructive pulmonary disease (due to any cause)" should be italicized to conform with 3.02 B and C.

Response: PaO_2, $PaCO_2$,PaO_2, and PCO_2 are commonly used symbols in respiratory physiology. In these symbols, the "P" represents gas pressure, and the "a" represents arterial blood. Although the "a" was not used in the symbols in the tables of Listing 3.02, the symbols are preceded with the word "arterial", which is what "a" symbolizes. Therefore, PaO_2 and $PaCO_2$ means the same thing as arterial PO_2 and arterial PCO_2, respectively.

PaO_2 was incorrectly used twice in the narrative of 3.02C2. The second reference to PaO_2 has been changed to $PaCO_2$.

The italicizing of the words in 3.02 B and C was not intended; therefore, we have placed these words in regular type.

Comment: Comments from an institute concerned with lung disease stated that table III in Listing 3.02 will not provide accurate measures for certain impairments of gas exchange.

Response: Table III has been deleted in response to this comment that points out the incongruity of a table on vital capacity for determining impairment of gas exchange. We agree that criteria for this condition should be limited to consideration of arterial blood gas studies and diffusing capacity for carbon monoxide. Also, the use of two tables providing different values for vital capacity would produce potentially conflicting results because of the difficulty in definitely determining whether an impairment is limited only to restrictive disease. Table II now provides the only criteria for vital capacity and the values in this table have been increased so that it will properly serve the function for which it was intended.

Comment: A department of a State government stated that the changes in Listings 3.02B and 3.09 will result in the denial of persons with disabling conditions.

Response: In Listing 3.02B, the numerical values were unchanged from the prior listing, which was numbered 3.05. This table has now been revised, based on comments, as explained in the response to the comment immediately preceding this one.

The revision in 3.09 concerns mycotic lung infection. Relatively few people now file for disability benefits because of this condition, and the change in this section, which eliminates an automatic assumption that many persons with this condition will be disabled for 12 months, is consistent with the usual course of this condition under current treatment.

Comment: Another comment on 3.09 stated that the change in the requirement for mycotic lung infection precludes consideration of persons with chronic mycotic lung infection. The commenter believes this results from the emphasis in this revision on the degree of lung damage after the acute infection is over.

Response: This emphasis does not preclude a finding of disability for unusual cases in which the infection becomes chronic. The last two sentences of section 3.00B specifically alert disability evaluators of the potential to find disability in these cases.

Comment: Concerning Listing 3.03B, one commenter felt that many low-income people are not able to afford a physician's services; therefore, the evidence necessary to document the occurrence of asthmatic attacks would be lacking. He felt that testimony from nurses or other knowledgeable persons should be accepted for documenting these attacks.

Response: Documentation of the occurrence of severe attacks and their frequency can include information from medical personnel other than a physician. Information from nurses or respiratory therapists, for example, can enter into reports of emergency room treatment. However, information solely from those sources is not adequate to permit an overall evaluation of this condition.

Listing 3.30B also specifies that other evidence is needed, such as evidence of chronic asthma between attacks (i.e., prolonged expiration with wheezing or rhonchi). That evidence can only be obtained upon physical examination, an examination which would be performed by a physician.

Comment: Another commenter suggested that the values for breathing tests should be related to specific job requirements.

Response: This would not be consistent with the purpose of the Listing of Impairments, which is to establish a level of severity that prevents work activity at all exertional levels.

Comment: One contributor noted that in Part A of the listings height is shown in inches in the respiratory tables, while the comparable table in Part B of the listings gives height in centimeters.

Response: A future revision of the listings will include metric equivalents for all tables.

Comment: Comments were received concerning the standardization of the procedures by facilities that perform pulmonary function studies.

Response: These issues are identical to those raised in relation to exercise tests for heart conditions. See the final comment and response under the "Cardiovascular System."

4. Cardiovascular System

Comment: A professional organization stated that there is a tendency to deny benefits to some heart patients who are disabled by congestive heart failure. This organization attributes this to the fact that there is too much emphasis in our evaluation on signs of gross congestive heart failure despite the fact that our regulations state that these signs need not be continuously present.

Response: As implied in this comment, we state (section 4.00B) that signs of vascular congestion need not be present at the time of adjudication. This is in recognition of the fact that medications often alleviate some signs and symptoms of heart failure without increasing physical function to the extent that work is possible. We do not believe that additional instructions are necessary in this area.

Comment: Another commenter questioned whether it would be possible to provide findings in relation to time periods to evaluate the persistence of congestive heart failure.

Response: The course of this condition is too variable for specific standards of this type. The evaluation must be based upon consideration of the overall evidence.

Comment: A professional organization commented that the word "pain" as used in section 4.00D is not sufficiently broad to describe the ways that patients describe a symptom that results from ischemic heart disease.

Response: We do not believe that further description, short of the explanation given by medical texts, would give an understanding of the variety of ways this symptom may be reported by patients. The evaluation of medical reports by physicians in our program provides the medical knowledge needed for this area. We request that reports from treating sources include a description of the patients' complaints. The description of chest pain of cardiac origin in 4.00E is intended to provide our program requirements rather than to be a guide for treating physicians in recognizing or reporting angina.

Comment: An institute concerned with heart, lung, and blood diseases expressed concern about the number of conditions that can cause chest pain. This combined with the relatively high number of persons who show false negative and false positive responses during exercise tests gives a likelihood of relatively frequent misclassification. This comment also points out that the electrocardiogram lead system used during exercise tests has an influence on the rate of false responses.

Response: This problem cannot be entirely eliminated. It is reduced, however, in the case of false positives, by obtaining a good medical history, especially of the character and inciting factors of chest pain. This is practiced in our evaluation and emphasized in section 4.00E. Errors due to false negatives are mitigated by the evaluation of findings other than those obtained by exercise testing.

We have always attemped to adopt procedures that are widely accepted by current medical authorities. The use of multiple leads does increase accuracy. Our recent experience shows that many of the tests we receive are being performed with multiple leads. We intend to encourage this practice and to formally propose it, for the tests we purchase, in the next revision of this listing.

Comment: The institute in the preceding comment also commented that the electrocardiogram findings that we cite would not identify some types of heart disease, that in some cases blood pressure changes during exercise can be more important than the electrocardiogram changes we cite, and that we have not cited findings obtained from cardiac catheterization which would be more specific for heart disease that involves both the left and right sides of the heart.

Response: We have provided the more commonly found electrocardiogram abnormalities. It is not possible to provide the complete array of combinations that, in conjunction with other findings, may indicate severe heart disease. These can only be considered on the basis of informed judgment utilizing the concept of medical equivalence, which is discussed in the preamble under "How We Use the Listing".

Significant lowering of blood pressure is an extremely important finding and, when reported, can represent a basis for considering a test "positive." Unfortunately, after a great deal of discussion with cardiologists outside our program, we have not been able to determine a specific written standard for the amount of blood pressure drop that can be generally applied.

Cardiac catheterization is not a procedure that we can independently purchase, and we find that it is performed by treating sources in too few cases to warrant providing criteria. Moreover, there is a lack of agreement on the specific level of catheterization findings that would correlate with the requirements now in the listings.

Comment: A professional organization concerned with heart disease suggested that the reference to electrocardiogram changes in section 4.00F2 should be changed from "positive" to "abnormal."

This organization points out that this is more correct because this finding alone does not establish the diagnosis.

Response: This change has been made for the reason stated by the commenter.

Comment: The organization in the preceding comment also suggested that there should not be a general restriction on our purchasing exercise tests for heart patients with Wolff-Parkinson-White syndrome because new medications permit some of these patients to perform these tests without hazard.

Response: The decision on whether to perform an exercise test for a patient with this type of syndrome can be validly made only by a physician who has the patient under continuous management. Isolated findings that we might have available to make this judgment would not be adequate.

Comment: Comments from a professional association recommend that tests of cardiac function other than the one using a treadmill should be cited in section 4.00G. Although this association agrees that the treadmill test is preferable, it states that a vascular condition of the legs or other leg impairment may prevent some claimants from performing a treadmill test. Therefore, alternative exercise tests that can accommodate leg impairments should be cited.

Response: The inability of claimants to perform treadmill testing because of a leg impairment, or other impairment related to the heart, has not proved to be a problem. The treadmill speed required by our criteria can be obtained by persons who have some leg handicap. When it cannot, the other impairment is commonly sufficient to establish disability in itself. It may be possible, of course, that some individual may be unable to perform this test because of a noncardiac impairment that we would not consider disabling. If this should occur, we would not simply dismiss the cardiac impairment. We would need to evaluate it on another basis. We do not believe, however, that the regulations can cover contingencies of this type, which can occur for a variety of the listed impairments.

Comment: A commenter observed that rehabilitation programs using prescribed exercise and other therapeutic methods often raise the exertional tolerance of cardiac patients and should be considered in our criteria. Another commenter observed that coronary artery surgery often increases exertional tolerance.

Response: Rehabilitative measures to increase exertional tolerance are unquestionably desirable for many cardiac patients. The consideration of this is a nationwide disability program presents many problems, however. While rehabilitation is relatively long-range, we are required to make a determination within a reasonable period after the claim is filed. A policy to deny persons until rehabilitation is tried would also present problems for a disability program handling a large number of claims. There are many medical variables that must be considered to predict the extent that any individual is likely to benefit from this type of rehabilitation, and even for those who are the best candidates, the outcome is still somewhat uncertain until the program has been tried for a period of time. When exertional status has been improved through rehabilitation, however, the current regulations provide for its consideration through the evaluation of the results of exercise tolerance tests, which are an integral part of these programs.

Surgery of the coronary arteries presents similar problems in terms of the time and extensive evaluation needed to predict improvement. In view of these considerations, we believe it is sound to continue to evaluate heart disease in terms of current loss of function. Also, we do not believe it would be realistic for a benefit program to insist that a claimant have this type of surgery. This decision is one that should be reserved for the patient and the testing physician. Our criteria do consider the results of this surgery when it has been performed.

Comment: Another commenter suggests we should take an active role in managing rehabilitation programs for claimants with heart disease.

Response: We consider all disability applicants for referral to local rehabilitation agencies. The role of the Social Security disability program is not to manage treatment.

Comment: One commenter felt the requirement for copies of electrocardiograms in section 4.00F should not be applied retroactively, because it would place a hardship on older people who are the most common victims of heart disease.

Response: Apparently this commenter feels that this addition could result in persons who are now receiving benefits becoming ineligible because of this requirement. This would not occur. It has been the policy for many years to obtain copies of electrocardiograms rather than to obtain narrative descriptions or interpretation. This addition merely reflects this long-standing practice. In any case, payment of benefits would not cease solely because a technical requirement of documentation was not fulfilled when a determination was made in the past.

Comment: A department of a State government stated that the changes in section 4.00F2 and Listing 4.13 will result in the denial of persons with disabling conditions.

Response: The change in 4.00F2 could have no measurable impact. It merely specifies that a certain type of electrocardiogram tracing, a posthyperventilation tracing, is required for accurate evaluation in certain rare situations.

Numerical values for a test that measures the adequacy of blood circulation in the legs have been added to section 4.13B. This test was used under the prior listing and the revision only provides the public with the numerical criteria that are used.

Comment: Another commenter stated that we should emphasize that electrocardiograms taken during exercise testing should include a tracing taken at peak exercise and that we should require data on the speed, elevation and duration of the treadmill at each stage of exercise.

Response: These areas are covered by the requirement in 4.00G2 that a precise description of the protocol that was followed must be provided. We agree, however, that it would be helpful to be more specific. The points included in the comment will be considered for the next revision of this listing.

Comment: A professional organization commented that the statement, in section 4.00G3, that an exercise test should not be obtained within 2 months of the onset of angina is misleading because it is possible in selected cases to obtain these tests without undue hazard well before 2 months. The 2-month guide implies, therefore, that it is improper or unethical for a physician to conduct an exercise test within this period.

Response: The timing of exercise tests depends on the medical findings and clinical course in each case, and we wish to emphasize that the 2-month period is only our guide on when we will purchase this test. It is necessary because of the time lag between the event and consideration of the reported information. By allowing a 2-month period, we are much less likely to encounter medical findings in a particular case that cause cancellation and rescheduling of the test at a later date.

Comment: One comment from a professional organization concerns section 4.00J, which provides a general principle that the disability of persons who have had major heart or vascular surgery should not be evaluated until 3 months after the surgery to allow time to assess the improvement of function achieved. The last paragraph of this section states that the implantation of a cardiac pacemaker should not be considered major surgery for the purposes of this section. This organization believes that the statement could be interpreted to mean that it is unnecessary to consider the improvement of heart function that usually follows pacemaker implantation.

Response: The statement means that implantation of a cardiac pacemaker is not considered major heart surgery as discussed in section 4.00J and it is unnecessary to wait 3 months to evaluate cardiac function after the implantation of a pacemaker. In this case, the condition stabilizes earlier and a valid evaluation is usually possible at a much earlier date. Since program experience has shown that this is well understood by disability evaluators, additional language has not been added.

Comment: Another commenter on section 4.00J questions why the 3-month period discussed in the prior response should not be extended to 4 or even 6 months. They stated that they have seen instances where well-motivated individuals were at least 6 to 9 months in returning to reasonable levels of activity, and extending the period even to 4 months would make it easier to evaluate these claims.

Response: We realize that the time required to effect improvement after heart surgery varies. However, we do not have the option of waiting extended periods of time following surgery before assessing the residuals since we are required to make a determination as expeditiously as possible after the claim is filed.

We have found that the usual time after surgery for adequate assessment of the results of surgery is approximately 3 months. Of course, there may be claims where 3 months may be too soon to assess the residuals of surgery. In these situations, the adjudicator may find it necessary to delay longer than 3 months before making an assessment or may even diary the matter for a medical reexamination if future improvement is contemplated.

This diary provides for an early reassessment of the condition after benefits are started.

Comment: A government agency commented that the exercise level (5 metabolic equivalent units) in Listing 4.04 does not preclude all employment since some occupations do not require energy beyond this level.

Response: Since the listings permit allowance of benefits regardless of occupational background, it is the goal to establish criteria at a level of severity that prevents any gainful activity. For this listing we must consider the exercise level in terms of what activities can be performed at peak capacity for protracted periods at that level. We do not believe that setting a more severe level would substantially alter the overall number of persons who would be determined to be disabled. With a more severe level, fewer would meet the requirements of this listing, but many of these would be allowed benefits after more extensive evaluation under the vocational guidelines.

Comment: Another comment on Listing 4.04 by a professional association concerned with heart disease questioned the language that states we will not purchase nuclear ejection fraction studies.

Response: This language has been deleted. We agree that this test has reached a level of general use and

acceptance that makes it practicable for us to purchase it in the cases in which it is important for disability evaluation.

Comment: A professional association commented that the requirement for a 3 mm. or greater elevation in the ST segment (4.04A4) is inconsistent with the current interpretation of this electrocardiogram finding by practicing cardiologists. Even a 1 mm. ST segment elevation is significant in the view of this association.

Response: This section has been revised to require an elevation of 1 mm. or greater.

Comment: Another commenter questioned the meaning of a "negative" coronary angiography as used in section C of Listing 4.04.

Response: We believe the current reference to the criteria in section B7 of the same listing, a reference that immediately follows the word negative, makes it clear that in this case "negative" means narrowing of the coronary arteries less than specified in section B7 of Listing 4.04.

Comment: Another comment from a professional association stated that some adults as well as children have cyanotic congenital heart disease. Thus, a listing with specific criteria should be formulated for adults.

Response: These cases are now evaluated under the criteria for congestive heart failure and other cardiac criteria. There are more specific criteria that would facilitate evaluation, however, and we are preparing a listing for congenital heart disease. This listing will be offered for public comment in the next revision of this listing.

Comment: Other comments from this organization suggested that we should make greater use of echocardiography, rely less on resting electrocardiograms, and cease citing the Master's test since there are now more accurate tests available.

Response: Further revisions are being considered in the area of heart failure and cardiomyopathy. The expanded use of echocardiography will play a part in these revisions. Revisions that will place less reliance on resting electrocardiograms are also being formulated. When these revisions are published, the Master's test will be deleted. This test is being retained at this time, however, because it is more descriptive than the alternative criteria in the present listing. All these revisions will require public comment and will be included in the next revision of this listing.

Comment: Another commenter stated that the present criteria are not sufficiently specific for the heart conditions that result from low cardiac output, such as those caused by abnormal connection between the heart chambers. Similar comments suggest that evaluation criteria should be provided for ejection fraction and electrocardiograms showing digitalis effect.

Response: These issues will be included in the revision discussed in the response to the comment immediately preceding this one.

Comment: In reference to our specifications for exercise testing, comments were received suggesting that we should establish standards for test facilities performing these tests or adopt the standards established by the American Medical Association.

Conversely, another commenter suggested we should accept methods used by individual test facilities, since there are several methods that are equally valid.

Response: There is no necessity for us to establish or adopt general standards for these test facilities. We are concerned only with certain aspects of the procedure which are critical to our evaluation. On the other hand, there is no need for us to forego the requirements that are now stated. These are commonly used by test facilities, and most test facilities readily comply with them.

5. Digestive System

Comment: A department of a State government stated that the changes in section D of Listing 5.04 and Listings 5.05 and 5.08 will result in the denial of benefits to persons with disabling conditions.

Response: Section D of Listing 5.04 has not been revised. This commenter may have intended to cite 5.05D. The change in this section will increase the number of people with severe liver disease who will meet this listing. It adds another basis for allowance on medical considerations alone, without eliminating the existing ones. Sections A and B of listing 5.05 both concern varices, lesions associated with liver disease, which indicate, under the conditions described, an advanced state of the disease. In a few cases, however, persons who meet either A or B subsequently experience marked improvement. The changes in these sections only eliminate the automatic allowance or continuance of benefits for these few individuals. However, we believe that the 12-month time period specified in the proposed changes is too short to determine whether improvement has occurred following the events specified in A and B. Therefore, for this purpose, the time period has been changed to 3 years.

The change in Listing 5.08 will have no measurable effect on the number of persons who are allowed benefits. This listing is intended to apply to individuals who have chronic gastrointestinal disease, and uses marked weight loss as the measure of severity. The only change is the addition of language that emphasizes that the weight loss must be persistent. The only result of this will be to prevent the application of this listing to persons who have acute conditions that, while severe, are subject to improvement or cure within a short period.

Comment: Another comment stated that while anorexia nervosa can be disabling, it is not mentioned in Listing 5.08.

Response: Listing 5.08 is restricted to conditions of gastrointestinal origin; anorexia nervosa is of psychological origin and is generally evaluated under Listings 12.04, 12.06, and 12.08.

Comment: Another comment on Listing 5.08 suggested that detailed records of weight loss and the treatment prescribed should be required by this listing.

Response: We do not believe this would be useful. A general statement of this nature would add little to the present listing. Conversely, detailed specifications would not be realistic, for defined requirements could not encompass the range of evidence that might prove to be convincing in a particular case.

7. Hemic and Lymphatic System

Comment: A commenter questioned the change in 7.00E that states that one type of chronic leukemia should be evaluated under the criteria for acute leukemia. This commenter believes this will lead to loss of benefits for those new receiving benefits on the basis of this condition.

Response: This addition facilitates findings of disability for persons with this type of chronic leukemia. The general criteria for chronic leukemia, since it is more likely to respond to treatment, are based on laboratory findings that show the severity of the condition. These detailed findings are not required for acute leukemia, and are not, therefore, required for this one type of chronic leukemia.

Comment: Comments from an attorney in private practice contend that a hematocrit of 30 percent or less should be sufficient to establish disability on the basis of chronic anemia.

Response: The capacity for sustained activity varies greatly for different individuals with hematocrit levels of 30 percent. Therefore, the additional

criteria under sections A and B of Listing 7.02 are necessary.

Comment: A department of a State government stated that Listing 7.02 requires a persistent hematocrit of 30 percent or less, while section C of Listing 7.05 requires a persistent hematocrit of 26 percent or less. They feel that the hematocrit values should be consistent in both 7.02 and 7.05C. In addition, they stated that "with" should be added following the italicized heading of 7.02.

Response: There is no inconsistency between the hematocrit levels given in these two listings because they serve entirely different purposes. The hematocrit levels specified in the heading of Listing 7.02 is not a listing criterion but a designation of chronic anemia that justifies the use of the criteria in sections A and B of this listing. The hematocrit level in Listing 7.05 is a criterion of that listing.

We are adding the word "with" following the heading of Listing 7.02, and are reversing the order of parts A and B, since we feel that these changes will make the listing more logical.

Comment: A professional organization commented that the 30 percent hematocrit finding in Listing 7.02 may be too permissive.

Response: As indicated in the prior response, a hematocrit of 30 percent is not a criterion for allowance. Additional criteria in sections A or B of this listing must be met.

Comment: A department of a State government stated that the change in Listing 7.16 will result in the denial of persons with disabling conditions.

Response: In Listing 7.16, the listing for a type of bone tumor, the only change is the deletion of the section on pathological fractures. This will have no impact on the rate of allowance for this tumor. The criterion for pathological fracture is unnecessary: other criteria cover this area. Section A of the same listing, for example, provides for allowance for this tumor when involvement of the bones is shown on X-ray, a finding that can be expected to be present before bone deterioration has advanced to the point that a pathological fracture has occurred. In the event that the decision should hinge on pathological fracture, Listing 1.11 will serve as valid means of evaluation.

Comment: A professional organization suggested that chronic myelogenous leukemia and inherited disorders such as Gaucher's, Niemann-Pick, and Tay-Sachs disease should be listed in the hemic and lymphatic section.

Response: The hemic and lymphatic section contains several broad listings, not related to diagnosis, under which these conditions can be evaluated.

8. Skin

Comment: A professional organization noted that this revision does not include skin disorders and stated that revision of skin diseases is necessary because many disease entities are omitted in this area.

Response: Revision of the Listing of Impairments is a continuing project, and skin disorders will be considered for future revision. We see little value, however, in an extensive list of skin diseases. The skin diseases most likely to cause disability are now listed, and the numerous other skin conditions that have some potential to produce disability have characteristics similar to one or more of the skin conditions now listed. This similarity facilitates determinations that such an unlisted skin disease is equal to the severity of one that is listed.

10. Multiple Body Systems

Comment: A physician, commenting on the listing for polyarteritis (10.03), noted that some individuals with this condition are now compensated by the use of immunosuppressive medication. These individuals may have the general arterial involvement required by this listing even though they do not have severe functional limitations.

Response: This is a valid concern which will be considered in a future revision of the listings.

Comment: A professional organization pointed out that one of the findings, LE preparation, used to establish lupus erythematosus in Listing 10.04 should be replaced by other tests that are now available.

Response: We have recognized that recent developments require several changes in this listing. A general revision will be presented for public comment in a future revision of this listing.

Comment: A legal services corporation commented that the listing for disseminated lupus erythematosus (10.04) should include arthritis, which is not an uncommon complication of this condition.

Response: When arthritis results from this condition, it is of an inflammatory type and is evaluated under Listing 1.02, which includes inflammatory arthritis from any cause.

Comment: A number of comments were received concerning the proposed change in the evaluation of extreme obesity (Listing 10.10). Several commenters feel that the increase in the weights in the tables in listing 10.10 constitutes an unjustified tightening of the criteria for determining disability. One commenter feels that weight alone should not be the primary basis for determining disability. Another commenter feels that the proposed change will create difficulty when persons receiving benefits are periodically evaluated to determine whether their conditions continue to be sufficiently severe to justify the continuation of payment of disability benefits. In connection with the requirement in the proposed change that the weight specified by the tables must persist for at least 3 months despite prescribed treatment, another commenter stated that detailed records of weights and the treatment prescribed should be required. And, with regard to the 3 month criterion just mentioned, another commenter questioned whether a person's disability onset begins once the person has met a listed weight for 3 months or if the 3 months may be considered part of disability.

Response: As explained under the subheading entitled "Study of the Disability Program", we have decided not to implement this proposal. Rather, we have decided to study case experience with the intent of providing a future revision that will better reflect the degree of impairment due to obesity which is considered severe enough to preclude gainful activity. However, the table in paragraph E of listing 10.10 is being modified for the reason given in the subheading in this preamble entitled "Study of the Disability Program."

Comment: One commenter suggested that more collagen diseases, such as dermatomyositis, should be included in the listings.

Response: Additional conditions of this type are being considered for future revision of the listings.

11. Neurological

Comment: A department of a State government stated that the changes in sections A and B of 11.00 will result in the denial of persons with disabling conditions.

Response: The change in section 11.00A calls for determination of the blood level of drugs used to control epileptic seizures. This could result in the denial of some individuals who would have been allowed benefits before this revision. The impact will probably be limited, however, because most persons with seizures can be expected to follow treatment. The only result of this revision will be to preclude the automatic allowance of persons who have an excellent chance of becoming free of symptoms by following conventional treatment.

The changes in 11.00B will not change the rates of allowances or denials. The first specifies that the diagnosis and prognosis of a brain tumor must be determined before applying the neurological findings. This only prevents the improper application of these neurological findings to conditions that can be anticipated to be of a short duration. The second change is only a clarification. The word "benign" has been removed from the last sentence of the second paragraph of 11.00B. The purpose of this paragraph is to explain that different evaluation approaches are applied to histologically malignant brain tumors and other brain tumors. These other brain tumors are no longer referred to as "benign." Since "benign" was used to refer to a group of tumors that includes some types that are characterized by rapid growth and devastating neurological impairment, it was thought that this word might be controversial, in that it might be thought to imply that these tumors are always less severe than histologically malignant brain tumors.

Comment: Another comment on drug level monitoring pointed out that this provision is not contained in the listing for children in Part B.

Response: We plan to revise this listing. However, applying this provision to children involves some additional considerations. The public organizations and individuals who will be concerned with this change will be somewhat different from those concerned with the adult requirements. Revision of this listing, therefore, will be offered for public comment in a future revision of the Listing of Impairments.

Comment: A professional organization concerned with the treatment of epilepsy commented that blood level monitoring of drugs is expensive and disability claims should not be held responsible for this test.

Response: The requirement for blood level testing will not increase medical costs for claimants. When tests have been obtained during the ordinary course of treatment, they will be used for disability evaluation. If not, the test will be arranged at government expense.

Comment: Another commenter sees the monitoring of drug levels as an infringement of civil rights.

Response: We believe this requirement is consistent with the claimant's obligation under the provisions of the Social Security Act to provide evidence necessary for the disability determination. Also, this procedure is consistent with the current medical management of seizures; that is, when seizures are continuing to occur at a rate in excess of what is expected with prescribed medication, blood drug levels are obtained by treating physicians.

Comment: Another commenter pointed out that blood levels should not be the sole basis for determining whether a drug is being taken and suggested that language should be added to emphasize this. A similar comment states that low blood levels may occur even though the patient is taking medication regularly.

Response: Although we believe these concepts are generally understood by disability evaluators in our program, we agree they should be acknowledged in the listings. Therefore, the following language has been added to section 11.00A. "Blood drug levels should be evaluated in conjunction with all the other evidence to determine the extent of compliance. When the reported blood drug levels are low, therefore, the information obtained from the treating source should include the physician's statement as to why the levels are low and the results of any relevant diagnostic studies concerning the blood levels."

Comment: Another comment suggested that we should specifically state that benefits should not be denied a person whose psychiatric problems prevent the taking of seizure medication.

Response: A general statement of this type would be of little value. A psychiatric problem of this significance would constitute an impairment that would need to be considered in the total evaluation of disability.

Comment: A professional organization concerned with the treatment of epilepsy recommended that physicians with expertise in epilepsy should be consulted in the medical evaluation process.

Response: Physicians participate in every determination of medical severity at the DDS level. In other cases, medical participation is obtained when needed. Although we attempt to recruit a variety of medical specialists to conduct these evaluations, it is impossible to have physicians who have specialized experience in the treatment of epilepsy review all cases involving this condition. There are established referral channels, however, whereby a specialist's evaluation can be obtained for problem cases.

Comment: Another comment from the organization in the preceding comment suggests that it should be made clear that a negative electroencephalogram (EEG) is not conclusive evidence that a person does not have epileptic seizures.

Response: EEG findings are valuable in our evaluation because a specifically abnormal EEG provides evidence that reinforces the available reported findings and may make it unnecessary to obtain more extensive medical history and findings. We do not believe it is necessary to further explain the use of EEG findings in evaluation. Experience has shown that physicians who evaluate disability understand that a negative EEG does not rule out epileptic seizures and that persons who do not record positive changes can be allowed disability benefits.

Comment: Another commenter recommended that we require two EEG's rather than the one now designated.

Response: Although the extent of documentation is always somewhat judgmental, we believe our combined requirement—an EEG plus a description of a typical seizure pattern—provides sufficient, convincing documentation.

Comment: A neurological clinic commented that the word "diurnal," which is used in Listing 11.02, refers more commonly to daily, or recurring daily, rather than daytime, its secondary meaning. They suggest replacing "diurnal" with "daytime," so there will be no confusion as to how "diurnal" is used.

Response: We have made this change for the reason stated in the comment. Also, since the word "diurnal" is used similarly in listing 111.02A1, we have made this change in that listing as well.

Comment: Several letters suggested that the listing for epilepsy (11.02) should be based on the most recent international classification of seizures, which divides epileptic seizures into general types and the provides further subdivision on the basis of a variety of neurological characteristics and symptoms, leading to a total of 18 categories.

Response: Althought this classification is unquestionably valuable in the therapeutic management of seizures and for research, it does not lend itself to a broad classification on the basis of the functions that are most important to work. The present division of this listing provides an evaluation approach based on the most common characteristics of seizures, with the required frequency of seizures related to the disruption of activity that results. Thus, the primary focus of this listing is on the characteristics of the seizures, both during the seizure and the period following it, rather than on the diagnosis of the particular subtype.

Comments: In commenting on Listing 11.03, the listing for minor motor seizures, a neurological clinic stated that manifestations of unconventional behavior are usually ictal rather than postictal.

Response: It is postictal behavior, behavior following the seizure, that is critical to the level of severity intended for this listing. Unconventional behavior that is ictal, occuring during the seizure, is overshadowed by the listing requirement that the seizure must be associated with alterations of awareness or loss of consciousness.

Comment: Another commenter questioned the inclusion of psychomotor seizures in two listings, the listing for major motor seizures (11.02) and minor motor seizures (11.03).

Response: Seizures of this origin result in the patterns described under both listings. They may be classified as being of the major or minor variety, depending upon the pattern in the particular individual.

Comment: Several commenters stated that although listing 11.04 requires an impairment of two extremities, cerebral vascular accidents often produce disability by the impairment of one extremity.

Response: This requirement of the listing does not prevent a finding of disability for impairment of one extremity. These impairments can be allowed by the use of vocational evaluation, the phase of evaluation that is explained in this preamble under the heading "How We Use the Listing." Citing an impairment of one extremity is not appropriate for the Listing of Impairments, however, for its purpose is to identify impairments that can be expected to be disabling, regardless of a person's vocational background.

Comment: Another commenter stated that the listing for vascular accidents (11.04) should include limitations resulting from visual-perceptual dysfunction, since patients with this type of dysfunction do not do as well as others.

Response: In most cases this type of dysfunction is not the one that has the most impact on functional capacity and is one that is the most difficult to document. Insofar as visual-perceptual dysfunction has a signficant impact, it is likely to result in ineffective communication, which is included in Part A of this listing.

Comment: In commenting on neurological Listings 11.08 and 11.14 two organizations stated that sensory loss can severely affect an individual's function despite adequate return of motor function. Therefore, the organizations believe these listings place too much emphasis on motor loss.

Response: Disorganization of motor function is essential for the level of severity that is intended for these two conditions. Sensory disruption may contribute to loss of motor function and may be considered in this context. This is stated by reference to section 11.00C.

Comment: Another comment, concerning the association of sensory and motor abnormalities, stated that it is unusual for a patient to have significant abnormalities of both types.

Response: This is not unusual at the degree of severity that we intend for these neurological listings. Conditions that do not have this pattern are at a lesser level of severity than is intended under the listing.

Comment: A professional organization concerned with speech, language, and hearing problems suggested the inclusion of criteria for communication disorders in many of the neurological listings.

Response: Although communication problems are associated with many neurological conditions, the listings must focus on the typical characteristics of each condition that most often result in disability. Communication disorders, for the neurological conditions for which they are not now cited, are not usually the primary cause of disability.

Comment: A comment from an association questions how evaluation would be handled under 11.00B in cases in which a brain scan indicates tumor spread, but the site of the primary tumor is unknown and thus a biopsy is not possible.

Response: In this case, the determination would rest on the evidence that is obtainable. The scan would be evaluated in conjunction with the clinical findings to determine if there is convincing evidence of disability. Claims are not denied merely because an atypical situation prevents obtaining a procedure that is cited in the listings. Section 13.00B provides direction for this.

Comment: Another comment concerned the absence of listings for sleep disorders and suggested that we coordinate our efforts to develop listings for these disorders with a professional organization.

Response: We have been considering criteria for these conditions, which are now the subject of increasing research and medical publication. The views of professional and advocate groups concerned with these conditions will be considered.

12. Mental Disorders

As indicated previously in the preamble to these amendments, a complete revision of the "12.00 Mental Disorders" of the Listing of Impairments was published in the **Federal Register** (50 FR 35038) on August 28, 1985.

13. Neoplastic Diseases, Malignant

Comment: A department of a State government stated that the change in section E of Listing 13.13 will result in the denial of persons with disabling conditions.

Response: All the existing criteria in Listing 13.13 were retained. Section E of Listing 13.13 is an addition to this listing that provides another means by which a claimant may be found disabled on medical considerations alone.

Part B of Appendix 1

102.00 Special Senses and Speech

Comment: A professional organization recommended that Listing 102.00 be expanded to include a hearing test at a level of 4,000 Hertz.

Response: We have been investigating the necessity of testing at higher frequencies. Previous contacts with audiologic and otolaryngologic groups have recommended another level. No change is being made at this time. We are obtaining further information to determine whether losses at this high frequency significantly restrict a child's ability to hear.

Comment: Several commenters stated that the change in the listing for hearing impairments in children (102.08) is too restrictive.

Response: As explained under the subheading entitled "Study of the Disability Program" in the preamble, this proposed revision is not being implemented at this time. Further study of a change of this type will be made.

103.00 Respiratory System

Comment: A department of a State government stated that section 103.00 should contain the requirement for the correction of ventilatory function test findings for BTPS as in the 3.00 section.

Response: We have added this requirement to section 103.00, to be consistent with the corresponding 3.00 section.

104.00 Cardiovascular System

Comment: An association concerned with pediatrics commented that the 6-month requirement for the persistence of rheumatic heart disease in Listing 104.09 is excessive and stated that a 3-month period coupled with significant cardiac pathology would be adequate.

Response: We agree with this comment. However, before making any revision to this listing, we are first consulting with specialists outside of SSA to help in the formulation of the new criteria. The new criteria will then be presented for public comment.

106.00 Genito-Urinary System

Comment: A legal services group commented that the standards for kidney disease in children in Listing 106.02 should be less restrictive than those for adults.

Response: This commenter is correct since creatinine levels depend, in part, on the muscle mass of the individual. Therefore, the serum creatinine value is being retained at 3 mg., and the creatinine clearance value has been adjusted to be consistent with the serum value of 3 mg.

112.00 Mental and Emotional Disorders

General Comments

Comment: Comments from a physician in private practice questioned the justification for the Listing of Impairments. This physician stated that medical facts and decisions by physicians cannot encompass all the issues that enter into employability, and that the decisions of disability also depend on social considerations and the learning and capability of each individual evaluated.

Response: The Listing of Impairments is one element of disability evaluation. Except for certain categories specified by regulations based upon the law (disabled widow(er)'s and SSI children under age 18), applicants have the potential for evaluation under the broader aspects discussed by this physician. All these considerations are explained in the disability regulations, to which the Listing of Impairments is an appendix. Sections 404.1545 and 404.1546 explain the evaluation of residual functional capacity, which is an assessment of the work-related functions that individuals are still capable of performing despite their impairment. Sections 404.1560 through 404.1569 explain how this assessment is then used to determine whether individuals have the capacity to do work they have done in the past or, if not, whether they have the vocational capacity to do other work in view of their age, education, and work experience. This approach could, of course, be used for all impairments; that is, the Listing of Impairments could be eliminated. We believe, however, that identifying a level of severity that warrants allowance without vocational assessment has proved effective over many years as the most economical and efficient means of screening the most severe cases.

Comment: A professional organization concerned with physical medicine and rehabilitation noted that one purpose of the listings is to assure that disability determinations have a sound medical basis. This organization suggests that this purpose would be further assured by a requirement that disability determinations be based on a diagnosis as established by a physician.

Response: Current regulations require that disability must be established on the basis of a medically determinable impairment as shown by medical signs, findings, as well as symptoms. The diagnosis is, of course, almost always established on the basis of these findings. In a few cases, however, there is unequivocal evidence of a severe, chronic impairment, even though the specific diagnosis is still questionable. We believe it is unnecessary to establish a requirement that could prevent an allowance for these rare cases with questionable diagnoses. Experience has shown the present requirements have resulted in determinations with a sound medical basis.

Comment: Several commenters advocated that the determination of disability should incorporate the principles contained in *Guides to the Evaluation of Permanent Impairment*, a publication by the American Medical Association (AMA). The commenters stressed the value of using the dual concepts of impairment and disability contained in the AMA system—impairment meaning the medical determination of the abnormalities that interfere with activities of daily living, and disability meaning an administrative decision that considers the individual's capabilities and the economic and social environment.

Response: Evaluation under the Listing of Impairments is only one aspect of Social Security's disability evaluation, and the total evaluation employs concepts similar to the dual concepts of "impairment" and "disability" in the AMA guides. An assessment of residual physical and mental capacities is made for persons who have a severe impairment but not so severe as to meet or equal the severity of a listing. This assessment, as is true of the AMA impairment concept, is a medical decision. After the impact of the impairment is assessed, an administrative determination of disability is made, which uses the nonmedical factors that are important to work adjustment. These factors—such as age, education, and work experience—are specified by statute. These principles are summarized in the preamble under the heading "How We Use the Listing" and are explained in detail in the regulations, §§ 404.1560–404.1569 and §§ 416.960–416.969.

The Listing of Impairments is also consistent with the concepts of "impairment" and "disability." Under the listings, an administrative decision has been made that when impairments reach a certain level of severity it is not economical to evaluate the individual's background because the vast majority of people will be disabled with this level of impairment.

Comment: A number of comments, on various body systems, suggested that we totally adopt the evaluation guides of the AMA contained in their publication entitled *Guides to the Evaluation of Permanent Impairment.*

Response: The AMA guides provide general direction for classification or grading of impairments into various broad groups or levels. They are used by a number of physicians and a variety of organizations, in lieu of establishing their own specific standards, for consideration of impairments under a number of programs. The Social Security Administration, in common with other large disability programs, has established medical criteria to respond to the specific definition of disability and the needs of the particular program.

Many of the AMA guides are not sufficiently specific for our program. Some are not closely related to the work-related limitations of function that we must consider under the Social Security Act's definition of disability. Some of the guides, for example, base the disability classification on the resulting symptoms, such as a heart condition that results in symptoms at rest. Rather than providing specific sets of medical findings, guides of this type are illustrated by case histories, which are not intended to be more than an example of one way that the specified degree of symptom severity can occur. Other guides that are more specific do not include the variables that we consider most critical to work capacity in terms of the statute defining disability. The AMA guide for the amputation of one leg, for example, gives a fixed percentage of disability. For our program, we believe the most important work-related consideration is whether there are complications present that prevent the effective use of a prosthesis, and this is the basis of our listing for this condition.

Comment: One letter states that the following statement in the proposed rules published on May 6, 1982, is not clear: "Thus, if a person's impairment or combination of impairments equals or exceeds the level of severity described in the listing, we find that he or she is

disabled solely on the basis of the medical facts, unless we have evidence to the contrary, for example, evidence that the person is actually doing substantial gainful activity."

Response: This statement is found in the part of the proposed rules published on May 6, 1982, that gives background. It is not feasible to give full details in this background information which places the revisions in the general context of the disability program. This commenter's main concern is the circumstances that can result in a denial of disability even though there is a condition that meets or equals the severity of a listed impairment. The regulations to which the Listing of Impairments is an appendix (20 CFR Part 404) give detailed information on this subject. Sections 404.1520, 404.1530, and 404.1571 through 404.1575 are the most pertinent to the issue raised by this comment. (Also see sections 416.920, 416.930, and 416.971 through 416.975.)

Comment: A letter from a professor of physical medicine and rehabilitation suggested that people with certain severe impairments, such as paraplegia and quadriplegia, be paid disability benefits even though they may be gainfully employed. The commenter feels this would encourage them to seek rehabilitation.

Response: The law already contains incentives for severely impaired persons to achieve employment. For example, it provides a 9-month trial work period. During this period, benefits continue regardless of earnings, thus allowing persons to test their work capacity without losing benefits. We believe this provision is preferable to the one suggested. Further, although severely impaired, persons with unique talents may be able to obtain high earnings. It would be in conflict with the statute to pay benefits to these persons.

Comment: A letter from a legal advocate for the disabled points out that there is a wide gulf between being medically capable of employment and finding employment. He advocates that an appropriate mechanism be effectuated to assist persons who are denied benefits.

Response: Persons who are denied benefits are considered for referral to local rehabilitation agencies. The statute specifically precludes ability to find a job as a determinant of disability.

Comment: Another commenter stated that the listings do not give sufficient emphasis to excessive fatigue.

Response: Fatigue, weakness and related symptoms result from many of the impairments cited in the listings. Fatigue is an important result of the medical conditions that are the most common causes of disability, including heart disease and lung disease and certain neurological impairments. However, there is little that can be stated in particular listings about fatigue that is of value in itself. Generally, it must be evaluated in terms of the findings and signs cited under various listings. However, we do address fatigue as it relates to multiple sclerosis. (See 11.00E and 11.09C in the neurological body system of the Listing of Impairments.)

Comment: A columnist who writes a column for the handicapped stated that many people with handicaps are disabled only because of attitude barriers that prevent them from obtaining work and because of lack of accommodations necessary for the handicapped. In view of this, the commenter feels that disability should not be denied any significantly disabled person.

Response: This type of latitude is not possible under the law. The statute defining disability requires that evaluation focus on the functional limitations resulting from a medical condition in relation to job requirements.

Comment: A letter from a local government unit urges us to keep in mind the impact of more restrictive criteria, both in terms of suffering and in shifting the burden to local governments. This commenter attached summaries of several denied cases to illustrate this impact.

Response: There is no general intent in this revision to establish more restrictive criteria. In some instances, medical advances in the treatment for a particular condition have required a revision that will result in fewer persons being allowed benefits. Only a small number of the total revisions are of this type, however. Other changes will result in some persons in a specific category being found disabled when they may not have been under the prior criteria.

Comment: One commenter noted that the listings are not numbered continuously; for example, Listing 7.02 is followed by 7.05.

Response: Program physicians and other personnel become accustomed to associating a listing number with a particular impairment. Therefore, insofar as possible, we try to avoid renumbering when revisions are made. Number stability also facilitates the assoication of the listings in Part B with those in Part A. The last two digits of the listings in the two parts are identical for listings in which the medical conditions are closely related.

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major rule. The revisions are of a technical-medical nature and no significant change in disability allowance and denial rates is expected. These amendments to the regulations only reflect changes made necessary by advances in the medical treatment of some diseases and in evaluation methods for certain impairments. The amendments do not have an annual effect on the economy of $100 million or more or otherwise meet the threshold criteria of the Executive Order. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations do not have a significant economic impact on a substantial number of small entities because they only affect disability determinations of individuals under title II and title XVI of the Act. We recognize that the Social Security Administration relies heavily upon medical reports submitted by many physicians practicing privately, in partnerships, and in groups; hospitals; medical clinics; and other health care providers that may be classified as small entities. However, these regulations will not have any significant economic impact upon them because their reporting responsibilities are essentially the same as before the issuance of these regulations. Moreover, under section 309 of Pub. L. 96–265 (the Social Security Disability Amendments of 1980), we now pay physicians not employed by the Federal government and other non-Federal providers of medical services for the reasonable cost of providing us with existing medical evidence that we need and request.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating OMB clearance.

The amendments are hereby adopted as revised and set forth below.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits, Disability benefits, Old-Age, survivors and disability insurance.

Dated: April 30, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: May 13, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950———)

For the reasons set out in the preamble, Part 404, Subpart P, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

20 CFR Part 404, Subpart P is amended as follows:

1. The authority citation for Subpart P continues to read as follows:

Authority: Issued under Secs. 202, 205, 216, 221, 222, 223, 225, and 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 68 Stat. 1080, as amended, 68 Stat. 1081, as amended, 86 Stat. 1082, as amended, 70 Stat. 815, as amended, 70 Stat. 817, as amended, 49 Stat. 647, as amended; 42 U.S.C. 402, 405, 416, 421, 422, 423, 425, and 1302.

2. Part 404, Appendix 1 (Listing of Impairments) of Subpart P is revised, except for Part A, Section 12, which remains unchanged, to read as follows:

Appendix 1.—Listing of Impairments

In the Listing of Impairments, the listings under each separate body system in both Part A and Part B will be effective for periods ranging from 4 to 8 years unless extended or revised and promulgated again. Specifically, the body system listings in the Listing of Impairments will be subject to the following termination dates:

Musculoskeletal system (1.00) within 5 years. Consequently, the listings in this body system will no longer be effective on December 6, 1990.

Respiratory system (3.00) within 6 years. Consequently, the listings in this body system will no longer be effective on December 6, 1991.

Cardiovascular system (4.00) within 4 years. Consequently, the listings in this body system will no longer be effective on December 6, 1989.

The listings under the other body systems in Part A and Part B will expire in 8 years. Consequently, the listing in these body systems will no longer be effective on December 6, 1993. The mental disorders listings in Part A will expire on August 27, 1988, unless extended or revised and promulgated again.

Part A

Criteria applicable to individuals age 18 and over and to children under age 18 where criteria are appropriate.

Sec.

1.00 Musculoskeletal System.
2.00 Special Senses and Speech.
3.00 Respiratory System.
4.00 Cardiovascular System.
5.00 Digestive System.
6.00 Genito-Urinary System.
7.00 Hemic and Lymphatic System.
8.00 Skin.
9.00 Endocrine System.
10.00 Multiple Body Systems.
11.00 Neurological.
12.00 Mental Disorders.
13.00 Neoplastic Diseases, Malignant.

1.00 Musculoskeletal System

A. *Loss of function* may be due to amputation or deformity. Pain may be an important factor in causing functional loss, but it must be associated with relevant abnormal signs or laboratory findings. Evaluations of musculoskeletal impairments should be supported where applicable by detailed descriptions of the joints, including ranges of motion, condition of the musculature, sensory or reflex changes, circulatory deficits, and X-ray abnormalities.

B. *Disorders of the spine*, associated with vertebrogenic disorders as in 1.05C, result in impairment because of distortion of the bony and ligamentous architecture of the spine or impingement of a herniated nucleus pulposus or bulging annulus on a nerve root. Impairment caused by such abnormalities usually improves with time or responds to treatment. Appropriate abnormal physical findings must be shown to persist on repeated examinations despite therapy for a reasonable presumption to be made that severe impairment will last for a continuous period of 12 months. This may occur in cases with unsuccessful prior surgical treatment.

Evaluation of the impairment caused by disorders of the spine requires that a clinical diagnosis of the entity to be evaluated first must be established on the basis of adequate history, physical examination, and roentgenograms. The specific findings stated in 1.05C represent the level required for that impairment; these findings, by themselves, are not intended to represent the basis for establishing the clincial diagnosis. Futhermore, while neurological examination findings are required, they are not to be interpreted as a basis for evaluating the magnitude of any neurological impairment. Neurological impairments are to be evaluated under 11.00–11.19.

The history must include a detailed description of the character, location, and radiation of pain; mechanical factors which incite and relieve pain; prescribed treatment, including type, dose, and frequency of analgesic; and typical daily activities. Care must be taken to ascertain that the reported examination findings are consistent with the individual's daily activities.

There must be a detailed description of the orthopedic and neurologic examination findings. The findings should include a description of gait, limitation of movement of the spine given quantitatively in degrees from the vertical position, motor and sensory abnormalities, muscle spasm, and deep tendon reflexes. Observations of the individual during the examination should be reported; e.g., how he or she gets on and off the examining table. Inability to walk on heels or toes, to squat, or to arise from a squatting position, where appropriate, may be considered evidence of significant motor loss. However, a report of atrophy is not acceptable as evidence of significant motor loss without circumferential measurements of both thighs and lower legs (or upper or lower arms) at a stated point above and below the knee or elbow given in inches or centimeters. A specific description of atrophy of hand muscles is acceptable without measurements of atrophy but should include measurements of grip strength.

These physical examination findings must be determined on the basis of objective observations during the examination and not simply a report of the individual's allegation, e.g., he says his leg is weak, numb, etc. Alternative testing methods should be used to verify the objectivity of the abnormal findings, e.g., a seated straight-leg raising test in addition to a supine straight-leg raising test. Since abnormal findings may be intermittent, their continuous presence over a period of time must be established by a record of ongoing treatment. Neurological abnormalities may not completely subside after surgical or nonsurgical treatment, or with the passage of time. Residual neurological abnormalities, which persist after it has been determined clinically or by direct surgical or other observation that the ongoing or progressive condition is no longer present, cannot be considered to satisfy the required findings in 1.05C.

Where surgical procedures have been performed, documentation should include a copy of the operative note and available pathology reports.

Electrodiagnostic procedures and myelography may be useful in establishing the clincial diagnosis, but do not constitute alternative criteria to the requirements in 1.05C.

C. *After maximum benefit from surgical therapy* has been achieved in situations involving fractures of an upper extremity (see 1.12) or soft tissue injuries of a lower or upper extremity (see 1.13), i.e., there have been no significant changes in physical findings or X-ray findings for any 6-month period after the last definitive surgical procedure, evaluation should be made on the basis of demonstrable residuals.

D. *Major joints* as used herein refer to hip, knee, ankle, shoulder, elbow, or wrist and hand. (Wrist and hand are considered together as one major joint.)

E. *The measurements of joint motion are* based on the techniques described in the "Joint Motion Method of Measuring and Recording," published by the American Academy of Orthopedic Surgeons in 1965, or the "Guides to the Evaluation of Permanent Impairment—The Extremities and Back" (Chapter I); America Medical Association, 1971.

1.01 Category of Impairments, Musculoskeletal

1.02 *Active rheumatoid arthritis and other inflammatory arthritis.*

With both A and B.

A. History of persistent joint pain, swelling, and tenderness involving multiple major

joints (see 1.00D) and with signs of joint inflammation (swelling and tenderness) on current physical examination despite prescribed therapy for at least 3 months, resulting in significant restriction of function of the affected joints, and clinical activity expected to last at least 12 months; and

B. Corroboration of diagnosis at some point in time by either:

1. Positive serologic test for rheumatoid factor; or

2. Antinuclear antibodies; or

3. Elevated sedimentation rate; or

4. Characteristic histologic changes in biopsy of synovial membrane or subcutaneous nodule (obtained independent of Social Security disability evaluation).

1.03 *Arthritis of a major weight-bearing joint (due to any cause):*

With history of persistent joint pain and stiffness with signs of marked limitation of motion or abnormal motion of the affected joint on current physical examination. With:

A. Gross anatomical deformity of hip or knee (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) supported by X-ray evidence of either significant joint space narrowing or significant bony destruction and markedly limiting ability to walk and stand; or

B. Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint and return to full weight-bearing status did not occur, or is not expected to occur, within 12 months of onset.

1.04 *Arthritis of one major joint in each of the upper extremities (due to any cause):*

With history of persistent joint pain and stiffness, signs of marked limitation of motion of the affected joints on current physical examination, and X-ray evidence of either significant joint space narrowing or significant bony destruction. With:

A. Abduction and forward flexion (elevation) of both arms at the shoulders, including scapular motion, restricted to less than 90 degrees; or

B. Gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability, ulnar deviation) and enlargement or effusion of the affected joints.

1.05 *Disorders of the spine:*

A. Arthritis manifested by ankylosis or fixation of the cervical or dorsolumbar spine at 30° or more of flexion measured from the neutral postion, with X-ray evidence of:

1. Calcification of the anterior and lateral ligaments; or

2. Bilateral ankylosis of the sacroiliac joints with abnormal apophyseal articulations; or

B. Osteoporosis, generalized (established by X-ray) manifested by pain and limitation of back motion and paravertebral muscle spasm with X-ray evidence of either:

1. Compression fracture of a vertebral body with loss of at least 50 percent of the estimated height of the vertebral body prior to the compression fracture, with no intervening direct traumatic episode; or

2. Multiple fractures of vertebrae with no intervening direct traumatic episode; or

C. Other vertebrogenic disorders (e.g., herniated nucleus pulposus, spinal stenosis) with the following persisting for at least 3 months despite prescribed therapy and expected to last 12 months. With both 1 and 2:

1. Pain, muscle spasm, and significant limitation of motion in the spine; and

2. Appropriate radicular distribution of significant motor loss with muscle weakness and sensory and reflex loss.

1.08 *Osteomyelitis or septic arthritis (established by X-ray):*

A. Located in the pelvis, vertebra, femur, tibia, or a major joint of an upper or lower extremity, with persistent activity or occurrence of at least two episodes of acute activity within a 5-month period prior to adjudication, manifested by local inflammatory, and systemic signs and laboratory findings (e.g., heat, redness, swelling, leucocytosis, or increased sedimentation rate) and expected to last at least 12 months despite prescribed therapy; or

B. Multiple localizations and systemic manifestations as in A above.

1.09 *Amputation of anatomical deformity of (i.e., loss of major function due to degenerative changes associated with vascular or neurological deficits, traumatic loss of muscle mass or tendons and X-ray evidence of bony ankylosis at an unfavorable angle, joint subluxation or instability):*

A. Both hands; or

B. Both feet; or

C. One hand and one foot.

1.10 *Amputation of one lower extremity (at or above the tarsal region):*

A. Hemipelvectomy or hip disarticulation, or

B. Amputation at or above the tarsal region due to peripheral vascular disease or diabetes mellitus; or

C. Inability to use a prosthesis effectively, without obligatory assistive devices, due to one of the following:

1. Vascular disease; or

2. Neurological complications (e.g., loss of position sense); or

3. Stump too short or stump complications persistent, or are expected to persist, for at least 12 months from onset; or

4. Disorder of contralateral lower extremity which markedly limits ability to walk and stand.

1.11 *Fracture of the femur, tibia, tarsal bone of pelvis* with solid union not evident on X-ray and not clinically solid, when such determination is feasible, and return to full weight-bearing status did not occur or is not expected to occur within 12 months of onset.

1.12 *Fractures of an upper extremity* with non-union of a fracture of the shaft of the humerus, radius, or ulna under continuing surgical management directed toward restoration of functional use of the extremity and such function was not restored or expected to be restored within 12 months after onset.

1.13 *Soft tissue injuries of an upper or lower extremity* requiring a series of staged surgical procedures within 12 months after onset for salvage and/or restoration of major function of the extremity, and such major function was not restored or expected to be restored within 12 months after onset.

2.00 Special Senses and Speech

A. *Ophthalmology*

1. *Causes of impairment.* Diseases or injury of the eyes may produce loss of central or peripheral vision. Loss of central vision results in inability to distinguish detail and prevents reading and fine work. Loss of peripheral vision restricts the ability of an individual to move about freely. The extent of impairment of sight should be determined by visual testing.

2. *Central visual acuity.* A loss of central visual acuity may be caused by impaired distant and/or near vision. However, for an individual to meet the level of severity described in 2.02 and 2.04, only the remaining central visual acuity for distance of the better eye with best correction based on the Snellen test chart measurement may be used. Correction obtained by special visual aids (e.g., contact lenses) will be considered if the individual has the ability to wear such aids.

3. *Field of vision.* Impairment of peripheral vision may result if there is contraction of the visual fields. The contraction may be either symmetrical or irregular. The extent of the remaining peripheral visual field will be determined by usual perimetric methods at a distance of 330 mm. under illumination of not less than 7-foot candles. For the phakic eye (the eye with a lens), a 3 mm. white disc target will be used, and for the aphakic eye (the eye without the lens), a 6 mm. white disc target will be used. In neither instance should corrective spectacle lenses be worn during the examination but if they have been used, this fact must be stated.

Measurements obtained on comparable perimetric devices may be used; this does not include the use of tangent screen measurements. For measurements obtained using the Goldmann perimeter, the object size designation III and the illumination designation 4 should be used for the phakic eye, and the object size designation IV and illumination designation 4 for the aphakic eye.

Field measurements must be accompanied by notated field charts, a description of the type and size of the target and the test distance. Tangent screen visual fields are not acceptable as a measurement of peripheral field loss.

Where the loss is predominantly in the lower visual fields, a system such as the weighted grid scale for perimetric fields described by B. Esterman (see Grid for Scoring Visual Fields, II. Perimeter, *Archives of Ophthalmology*, 79:400, 1968) may be used for determining whether the visual field loss is comparable to that described in Table 2.

4. *Muscle function.* Paralysis of the third cranial nerve producing ptosis, paralysis of accommodation, and dilation and immobility of the pupil may cause significant visual impairment. When all the muscle of the eye are paralyzed including the iris and ciliary body (total ophthalmoplegia), the condition is considered a severe impairment provided it is bilateral. A finding of severe impairment based primarily on impaired muscle function must be supported by a report of an actual measurement of ocular motility.

5. *Visual efficiency.* Loss of visual efficiency may be caused by disease or injury resulting in a reduction of central visual acuity or visual field. The visual efficiency of one eye is the product of the percentage of central visual efficiency and the percentage

of visual field efficiency. (See Tables No. 1 and 2, following 2.09.)

6. *Special situations.* Aphakia represents a visual handicap in addition to the loss of central visual acuity. The term monocular aphakia would apply to an individual who has had the lens removed from one eye, and who still retains the lens in his other eye, or to an individual who has only one eye which is aphakic. The term binocular aphakia would apply to an individual who has had both lenses removed. In cases of binocular aphakia, the central efficiency of the better eye will be accepted as 75 percent of its value. In cases of monocular aphakia, where the better eye is aphakic, the central visual efficiency will be accepted as 50 percent of the value. (If an individual has binocular aphakia, and the central visual acuity in the poorer eye can be corrected only to 20/200, or less, the central visual efficiency of the better eye will be accepted as 50 percent of its value.)

Ocular symptoms of systemic disease may or may not produce a disabling visual impairment. These manifestations should be evaluated as part of the underlying disease entity by reference to the particular body system involved.

7. *Statutory blindness.* The term "statutory blindness" refers to the degree of visual impairment which defines the term "blindness" in the Social Security Act. Both 2.02 and 2.03 A and B denote statutory blindness.

B. *Otolaryngology*

1. *Hearing impairment.* Hearing ability should be evaluated in terms of the person's ability to hear and distinguish speech.

Loss of hearing can be quantitatively determined by an audiometer which meets the standards of the American National Standards Institute (ANSI) for air and bone conducted stimuli (i.e., ANSI S 3.6–1969 and ANSI S 3.13–1972, or subsequent comparable revisions) and performing all hearing measurements in an environment which meets the ANSI standard for maximal permissible background sound (ANSI S 3.1–1977).

Speech discrimination should be determined using a standardized measure of speech discrimination ability in quiet at a test presentation level sufficient to ascertain maximum discrimination ability. The speech discrimination measure (test) used, and the level at which testing was done, must be reported.

Hearing tests should be preceded by an otolaryngologic examination and should be performed by or under the supervision of an otolaryngologist or audiologist qualified to perform such tests.

In order to establish an independent medical judgment as to the level of impairment in a claimant alleging deafness, the following examinations should be reported: Otolaryngologic examination, pure tone air and bone audiometery, speech reception threshold (SRT), and speech discrimination testing. A copy of reports of medical examination and audiologic evaluations must be submitted.

Cases of alleged "deaf mutism" should be documented by a hearing evaluation. Records obtained from a speech and hearing rehabilitation center or a special school for the deaf may be acceptable, but if these reports are not available, or are found to be inadequate, a current hearing evaluation should be submitted as outlined in the preceding paragraph.

2. *Vertigo associated with disturbances of labyrinthine-vestibular function, including Meniere's disease.* These disturbances of balance are characterized by an hallucination of motion or loss of position sense and a sensation of dizziness which may be constant or may occur in paroxysmal attacks. Nausea, vomiting, ataxia, and incapacitation are frequently observed, particularly during the acute attack. It is important to differentiate the report of rotary vertigo from that of "dizziness" which is described as lightheadedness, unsteadiness, confusion, or syncope.

Meniere's disease is characterized by paroxysmal attacks of vertigo, tinnitus, and fluctuating hearing loss. Remissions are unpredictable and irregular, but may be longlasting; hence, the severity of impairment is best determined after prolonged observation and serial reexaminations.

The diagnosis of a vestibular disorder requires a comprehensive neuro-otolaryngologic examination with a detailed description of the vertiginous episodes, including notation of frequency, severity, and duration of the attacks. Pure tone and speech audiometry with the appropriate special examinations, such as Bekesy audiometry, are necessary. Vestibular functions is assessed by positional and caloric testing, preferably by electronystagmography. When polytograms, contrast radiography, or other special tests have been performed, copies of the reports of these tests should be obtained in addition to reports of skull and temporal bone X-rays.

3. *Organic loss of speech.* Glossectomy or larynegectomy or cicatricial laryngeal stenosis due tc injury or infection results in loss of voice production by normal means. In evaluating organic loss of speech (see 2.09), ability to produce speech by any means includes the use of mechanical or electronic devices. Impairment of speech due to neurologic disorders should be evaluated under 11.00–11.19.

2.01 Category of Impairments, Special Senses and Speech

2.02 *Impairment of central visual acuity.* Remaining vision in the better eye after best correction is 20/200 or less.

2.03 *Contraction of peripheral visual fields in the better eye.*

A. To 10° or less from the point of fixation; or

B. So the widest diameter subtends an angle no greater than 20°; or

C. To 20 percent or less visual field efficiency.

2.04 *Loss of visual efficiency.* Visual efficiency of better eye after best correction 20 percent or less. (The percent of remaining visual efficiency = the product of the percent of remaining central visual efficiency and the percent of remaining visual field efficiency.)

2.05 *Complete homonymous hemianopsia* (with or without macular sparing). Evaluate under 2.04.

2.06 *Total bilateral ophthalinopiegia.*

2.07 *Disturbance of labyrinthine-vestibular function (including Meniere's disease),* characterized by a history of frequent attacks of balance disturbance, tinnitus, and progressive loss of hearing. With both A and B:

A. Disturbed function of vestibular labyrinth demonstrated by caloric or other vestibular tests; and

B. Hearing loss established by audiometry.

2.08 *Hearing impairments* (hearing not restorable by a hearing aid) manifested by:

A. Average hearing threshold sensitivity for air conduction of 90 decibels or greater and for bone conduction to corresponding maximal levels, in the better ear, determined by the simple average of hearing threshold levels at 500, 1000 and 2000 hz. (see 2.00B1); or

B. Speech discrimination scores of 40 percent or less in the better ear;

2.09 *Organic loss of speech* due to any cause with inability to produce by any means speech which can be heard understood and sustained.

TABLE NO. 1.—PERCENTAGE OF CENTRAL VISUAL EFFICIENCY CORRESPONDING TO CENTRAL VISUAL ACUITY NOTATIONS FOR DISTANCE IN THE PHAKIC AND APHAKIC EYE (BETTER EYE)

Snellen		Percent central visual efficiency		
English	Metric	Phakic [1]	Aphakic monocular [2]	Aphakic binocular [3]
20/16	6/5	100	50	75
20/20	6/6	100	50	75
20/25	6/7.5	95	47	71
20/32	6/10	90	45	67
20/40	6/12	85	42	64
20/50	6/15	75	37	56
20/64	6/20	65	32	49
20/80	6/24	60	30	45
20/100	6/30	50	25	37
20/125	6/38	40	20	30
20/160	6/48	30		22
20/200	6/60	20		

Column and Use.

[1] Phakic.—1. A lens is present in both eyes. 2. A lens is present in the better eye and absent in the poorer eye. 3. A lens is present in one eye and the other eye is enucleated.

[2] Monocular.—1. A lens in absent in the better eye and present in the poorer eye. 2. The lenses are absent in both eyes; however, the central visual acuity in the poorer eye after best correction in 20/200 or less. 3. A lens is absent from one eye and the other eye is enucleated.

[3] Binocular.—1. The lenses are absent from both eyes and the central visual acuity in the poorer eye after best correction is greater than 20/200.

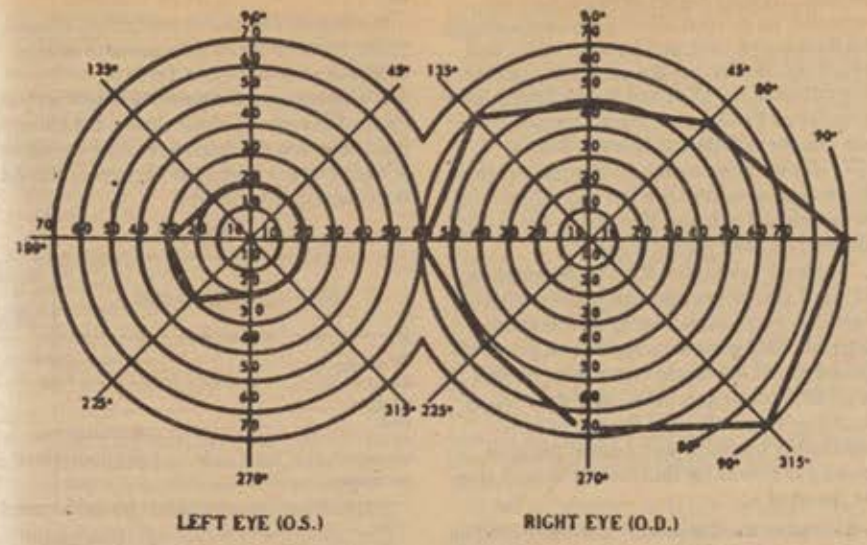


Table No. 2. Chart of visual field showing extent of normal field and method of computing percent of visual field efficiency

1. Diagram of right eye illustrates extent of normal visual field as tested on standard perimeter at 3/330 (3 mm. white disc at a distance of 330 mm.) under 7 foot-candles illumination. The sum of the eight principal meridians of this field total 500°.

2. The percent of visual field efficiency is obtained by adding the number of degrees of the eight principal meridians of the contracted field and dividing by 500. Diagram of left eye illustrates visual field contracted to 30° in the temporal and down and out meridians and to 20° in the remaining six meridians. The percent of visual field efficiency of this field is: $6\times20+2\times30=180+500=0.36$ or 36 percent remaining visual field efficiency, or 64 percent loss.

3.00 *Respiratory System*

A. *Introduction:* Impairments caused by the chronic disorder of the respiratory system generally result from irreversible loss of pulmonary functional capacity (ventilatory impairment, gas exchange impairment, or a combination of both). The most common symptom attributable to these disorders is dyspnea on exertion. Cough, wheezing, sputum production, hemoptysis, and chest pain may also occur, but need not be present. However, since these symptoms are common to many other diseases, evaluation of impairments of the respiratory system requires a history, physical examination, and chest roentgenogram to establish the diagnosis of a chronic respiratory disorder. Pulmonary function testing is required to provide a basis for assessing the impairment, once the diagnosis is established by appropriate clinical findings.

Alteration of ventilatory function may be due primarily to chronic obstructive pulmonary disease (emphysema, chronic bronchitis, chronic asthmatic bronchitis) or restrictive disorders with primary loss of lung volume (pulmonary resection, thoracoplasty, chest cage deformity as seen in kyphoscoliosis), or infiltrative interstitial disorders (diffuse fibrosis). Impairment of gas exchange without significant airway obstruction may be produced by interstitial disorders (diffuse fibrosis). Primary disease of pulmonary circulation may produce pulmonary vascular hypertension and, eventually, heart failure. Whatever the mechanism, any chronic progressive pulmonary disorder may result in cor pulmonale or heart failure. Chronic infection caused, most frequently by mycobacterial or mycotic organisms, may produce extensive lung destruction resulting in marked loss of pulmonary functional capacity. Some disorders such as bronchiectasis and asthma may be characterized by acute, intermittent illnesses of such frequency and intensity that they produce a marked impairment apart from intercurrent functional loss, which may be mild.

Most chronic pulmonary disorders may be adequately evaluated on the basis of history, physical examination, chest roentgenogram, and ventilatory function tests. Direct assessment of gas exchange by exercise arterial blood gas determination or diffusing capacity is required only in specific relatively rare circumstances, depending on the clinical features and specific diagnosis.

B. *Mycobacterial and mycotic infections of the lung will be evaluated* on the basis of the resulting impairment to pulmonary function. Evidence of infectious or active mycobacterial or mycotic infection, such as positive cultures, increasing lesions, or cavitation, is not, by itself, a basis for determining that the individual has a severe impairment which is expected to last 12 months. However, if these factors are abnormally persistent, they should not be ignored. For example, in those unusual cases where there is evidence of persistent pulmonary infection caused by mycobacterial or mycotic organisms for a period closely approaching 12 consecutive months, the clinical findings, complications, treatment considerations, and prognosis must be carefully assessed to determine whether, despite the absence of impairment of pulmonary function, the individual has a severe impairment that can be expected to last for 12 consecutive months.

C. *When a respiratory impairment is episodic in nature*, as may occur in complications of bronchietasis and asthmatic bronchitis, the frequency of severe episodes despite prescribed treatment is the criterion for determining the level of impairment. Documentation for episodic asthma should include the hospital or emergency room records indicating the dates of treatment, clinical findings on presentation, what treatment was given and for what period of time, and the clinical response. Severe attacks of episodic asthma, as listed in section 3.03B, are defined as prolonged episodes lasting at least several hours, requiring intensive treatment such as intravenous drug administration or inhalation therapy in a hospital or emergency room.

D. *Documentation of ventilatory function tests.* The results of ventilatory function studies for evaluation under tables I and II should be expressed in liters or liters per minute (BTPS). The reported one second forced expiratory volume (FEV_1) should represent the largest of at least three attempts. One satisfactory maximum voluntary ventilation (MVV) is sufficient. The MVV should represent the observed value and should not be calculated from FEV_1. These studies should be repeated after administration of a nebulized bronchodilator unless the prebronchodilator values are 80 percent or more of predicted normal values or the use of bronchodilators is contraindicated. The values in tables I and II assume that the ventilatory function studies were not performed in the presence of wheezing or other evidence of bronchospasm or, if these were present at the time of the examination, that the studies were repeated after administration of a bronchodilator. Ventilatory function studies performed in the presence of bronchospasm, without use of bronchodilators, cannot be found to meet the requisite level of severity in tables I and II.

The appropriately labeled spirometric tracing, showing distance per second on the abscissa and the distance per liter on the ordinate, must be incorporated in the file. The manufacturer and model number of the device used to measure and record the ventilatory function should be stated. If the spirogram was generated other than by direct pen linkage to a mechanical displacement-type spirometer, the spirometric tracing must show the calibration of volume units through mechanical means such as would be obtained using a giant syringe. The FEV_1 must be recorded at a speed of at least 20 mm. per second. Calculation of the FEV_1 from a flow volume loop is not acceptable. The recording device must provide a volume excursion of at least 10 mm. per liter. The MVV should be represented by the tidal excursion measured over a 10- to 15-second interval. Tracings showing only cumulative volume for the MVV are not acceptable. The ventilatory function tables are based on measurement of the height of the individual without shoes.

Studies should not be performed during or soon after an acute respiratory illness. A statement should be made as to the individual's ability to understand the directions and cooperate in performing the test.

E. *Documentation of chronic impairment of gas exchange—Arterial blood gases and exercise tests.*

1. *Introduction:* Exercise tests with measurement of arterial blood gases at rest and during exercise should be purchased when not available as evidence of record in cases in which there is documentation of chronic pulmonary disease, but the existing evidence, including properly performed ventilatory function tests, is not adequate to evaluate the level of the impairment. Before purchasing arterial blood gas tests, medical history, physical examination, report of roentgenogram, ventilatory function tests, electrocardiographic tracing, and hematocrit must be obtained and should be evaluated by a physician competent in pulmonary medicine. Arterial blood gas tests should not be purchased where full development short of such purchase reveals that the impairment meets or equals any other listing or when the claim can be adjudicated on some other basis. Capillary blood analysis for PO_2 or PCO_2 is not acceptable. Analysis of arterial blood gases obtained after exercise is stopped is not acceptable.

Generally individuals with an FEV_1 greater than 2.5 liters or an MVV greater than 100 liters per minute would not be considered for blood gas studies unless diffuse interstitial pulmonary fibrosis was noted on chest X-ray or documented by tissue diagnosis. The exercise test facility should be provided with the clinical reports, report of chest roentgenogram, and spirometry results obtained by the DDS. The testing facility should determine whether exercise testing is clinically contraindicated. If an exercise test is clinically contraindicated, the reason for exclusion from the test should be stated in the report of the exercise test facility.

2. *Methodology.* Individuals considered for exercise testing first should have resting PaO_2, $PaCO_2$, and pH determinations by the testing facility. The samples should be obtained in the sitting or standing position. The individual should be exercised under steady state conditions, preferably on a treadmill for a period of 6 minutes at a speed and grade providing a workload of approximately 17 ml. O_2/kg./min. If a bicycle ergometer is used, an exercise equivalent of 450 kgm./min., or 75 watts, should be used. At the option of the facility, a warm-up period of treadmill walking may be performed to acquaint the applicant with the procedure. If, during the warm-up period, the individual cannot exercise at the designated level, a lower speed and/or grade may be selected in keeping with the exercise capacity estimate. The individual should be monitored by electrocardiogram throughout the exercise and representative strips taken to provide heart rate in each minute of exercise. During the 5th or 6th minute of exercise, an arterial blood gas sample should be drawn and analyzed for PO_2, PCO_2, and pH. If the facility has the capability, and at the option of the DDS and the facility, minute ventilation (BTPS) and oxygen consumption per minute (STPD) and CO_2 production (STPD) should be measured during the 5th or 6th minute of exercise. If the individual fails to complete 6 minutes of exercise, the facility should comment on the reason.

The report should contain representative strips of electrocardiograms taken during the exercise, hematocrit, resting and exercise arterial blood gas value, speed and grade of the treadmill or bicycle ergometer exercise level in watts or kgm./min., and duration of exercise. The altitude of the test site, barometric pressure, and normal range of blood gas values for that facility should also be reported.

3. *Evaluation.* Three tables are provided in Listing 3.02C1 for evaluation of arterial blood gas determinations at rest and during exercise. The blood gas levels in Listing 3.02C1, Table III–A, are applicable at test sites situated at less than 3,000 feet above sea level. The blood gas levels in Listing 3.02C1, Table III–B, are applicable at test sites situated at 3,000 through 6,000 feet above sea level. The blood gas levels in Listing 3.02C1, Table III–C, are applicable for test sites over 6,000 feet above sea level. Tables III–B and C, take into account the lower blood PaO_2 normally found in individuals tested at the higher altitude. When the barometric pressure is unusually high for the altitude at the time of testing, consideration should be given to those cases in which the PaO_2 falls slightly above the requirements of Table III–A, III–B, or III–C, whichever is appropriate for the altitude at which testing was performed.

3.01 *Category of Impairments, Respiratory.*

3.02 *Chronic Pulmonary Insufficiency.* With:

A. Chronic obstructive pulmonary disease (due to any cause). With: Both FEV_1 and MVV equal to or less than values specified in Table I corresponding to the person's height without shoes.

TABLE I

Height without shoes (inches)	FEV_1 and MVV	
	Equal to or less than (L. BTPS)	(MBC) equal to or less than (L./min., BTPS)
60 or less	1.0	40
61–63	1.1	44
64–65	1.2	48
66–67	1.3	52
68–69	1.4	56
70–71	1.5	60
72 or more	1.6	64

or

B. *Chronic restrictive ventilatory disorders.* With: Total vital capacity equal to or less than values specified in Table II corresponding to the person's height without shoes. In severe kyphoscoliosis, the measured span between the fingertips when the upper extremities are abducted 90 degrees should be substituted for height.

TABLE II

Height without shoes (inches)	VC equal to or less than (L. BTPS)
60 or less	1.2
61–63	1.3
64–65	1.4
66–67	1.5
68–69	1.6
70–71	1.7
72–or more	1.8

or

C. Chronic Impairment of gas exchange (due to any cause). With:

1. Steady-state exercise blood gases demonstrating values of PaO_2 and simultaneously determined $PaCO_2$, measured at a workload of approximately 17 ml. O_2/kg./min. or less of exercise, equal to or less than the values specified in Table III–A or III–B or III–C.

TABLE III.—A

[Applicable at test sites less than 3,000 feet above sea level]

Arterial PCO_2 (mm. Hg)	Arterial PO_2 and equal to or less than (mm. Hg)
30 or below	65
31	64
32	63
33	62
34	61
35	60
36	59
37	58
38	57
39	56
40 or above	55

TABLE III.—B

[Applicable at test sites 3,000 through 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg)	Arterial PO_2 and equal to or less than (mm. Hg)
30 or below	60
31	59
32	58
33	57
34	56
35	55
36	54
37	53
38	52
39	51
40 or above	50

TABLE III-C

[Applicable at test sites over 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
30 or below	56
31	54
32	53
33	52
34	51
35	50
36	49
37	48
38	47
39	46
40 or above	45

or

2. Diffusing capacity for the lungs for carbon monoxide less than 6 ml./mm. Hg/min. (steady-state methods) or less than 9 ml./mm. Hg/min. (single breath method) or less than 30 percent of predicted normal. (All method, actual values, and predicted normal values for the methods used should be reported.): or

D. Mixed obstructive ventilatory and gas exchange impairment. Evaluate under the criteria in 3.02A, B, and C.

3.03 *Asthma.* With:

A Chronic asthmatic bronchitis. Evaluate under the criteria for chronic obstructive ventilatory impairment in 3.02A, or

B. Episodes of severe attacks (See 3.00C), in spite of prescribed treatment, occurring at least once every 2 months or on an average of at lest 6 times a year, and prolonged expiration with wheezing or rhonchi on physical examination between attacks.

3.06 *Pneumoconiosis (demonstrated by roentgenographic evidence).* Evaluate under criteria in 3.02.

3.07 *Bronchiectasis (demonstrated by radio-opaque material).* With:

A. Episodes of acute bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum) occurring at least every 2 months; or

B. Impairment of pulmonary function due to extensive disease should be evaluated under the applicable criteria in 3.02.

3.08 *Mycobacterial infection of the lung.* Impairment of pulmonary function due to extensive disease should be evaluated under appropriate criteria in 3.02.

3.09 *Mycotic infection of the lung.* Impairment of pulmonary function due to extensive disease should be evaluated under the appropriate criteria in 3.02.

3.11 *Cor pulmonale, or pulomonary vascular hypertension.* Evaluate under the criteria in 4.02D.

4.00 Cardiovascular System

A. *Severe cardiac impairment* results from one or more of three consequences of heart disease: (1) congestive heart failure; (2) ischemia (with or without necrosis) of heart muscle; (3) conduction disturbances and/or arrhythmias resulting in cardiac syncope.

With diseases of arteries and veins, severe impairment may result from disorders of the vasculature in the central nervous system, eyes, kidneys, extremities, and other organs.

The criteria for evaluating impairment resulting from heart diseases or diseases of the blood vessels are based on symptoms, physical signs and pertinent laboratory findings.

B. *Congestive heart failure* is considered in the Listing under one category whatever the etiology (i.e., arteriosclerotic, hypertenaive, rheumatic, pulmonary, congenital, or other organic heart diseases). Congestive heart failure is not considered to have been established for the purpose of 4.02 unless there is evidence of vascular congestion such as hepatomegaly or peripheral or pulmonary edema which is consistent with clinical diagnosis. (Radiological description of vascular congestion, unless supported by appropriate clinical evidence, should not be construed as pulmonary edema.) The findings of vascular congestion need not be present at the time of adjudication (except for 4.02A), but must be casually related to the current episode of marked impairment. The findings other than vascular congestion must be persistent.

Other congestive, ischemic, or restrictive (obstructive) heart diseases such as caused by cardiomyopathy or aortic stenosis may result in signficant impairment dues to congestive heart failure, rhythm disturbances, or ventricular outflow obstruction in the absence of left ventricular enlargement as described in 4.02B1. However, the ECG criteria as defined in 4.02B2 should be fulfilled. Clinical findings such as symptions of dyspnea, fatigue, rhythm disturbances, etc., should be documented and the diagnosis confirmed by echocardiography or at cardiac catheterization.

C. *Hypertensive vacular diseases* does not result in severe impairment unless it causes severe damage to one or more of four end organs: heart, brain, kidneys, or eyes. (retinae). The presence of such damage must be established by appropriate abnormal physical signs and laboratory findings as specified in 4.02 or 4.04, or for the body system involved.

D. *Ischemic heart diseases* may result in a marked impairment due to chest pain. Description of the pain must contain the clinical characteristics as discussed under 4.00E. In addition, the clinical impression of chest pain of cardiac origin must be supported by objective evidence as described under 4.00 F.G. or H.

E. *Chest pain of cardic origin* is considered to be pain which is precipitated by effort and promptly relieved by sublingual nitroglycerin or rapid-acting nitrates or rest. The character of the pain is classically described as crushing squeezing, burning, or oppressive pain located in the chest. Excluded is sharp, sticking or rhythmic pain. Pain occurring on exercise should be described specifically as to usual inciting factors (kind and degree), character, location, radiation, duration, and responses to nitroglycerin or rest.

So-called "anginal equivalent" locations manifested by pain in the throat, arms, or hands have the same validity as the chest pain described above. Status anginosus and variant angina of the Prinzmetal type (e.g., test angina with transitory ST elevation on electrocardiogram) will be considered to have the same validity as classical angina pectoris as described above. Shortness of breath as an isolated finding should not be considered as an anginal equivalent.

Chest pain that appears to be of cardiac origin may be caused by noncoronary conditions. Evidence for the latter should be actively considered in determining whether the chest pain is of cardiac origin. Among the more common conditions which may masquerade as angina are gastrointestinal tract lesions such as biliary tract disease, esophagitis, hiatal hernia, peptic ulcer, and pancreatitis; and musculoskeletal lesions such as costochondritis and cervical arthritis.

F. *Documentation of electrocardiography.*

1. *Electrocardiograms obtained at rest* must be submitted in the original or a legible copy of a 12-lead tracing appropriately labeled, with the standardization inscribed on the tracing. Alteration in standardization of specific leads (such as to accommodate large ORS amplitudes) must be shown on those leads.

The effect of drugs, electrolyte imbalance, etc., should be considered as possible noncoronary causes of ECG abnormalities, especially those involving the ST segment. If needed and available, pre-drug (especially predigitalis) tracing should be obtained.

The term "ischemic" is used in 4.04 to describe a pathologic ST deviation. Nonspecific repolarization changes should not be confused with ischemic configurations or a current of injury.

Detailed descriptions or computer interpretations without the original or legible copies of the ECG are not acceptable.

2. *Electrocardiograms obtained in conjunction with exercise tests* must include the original tracings or a legible copy of apropriate leads obtained before, during, and after exercise. Test control tracings, taken before exercise in the upright position, must be obtained. An ECG after 20 seconds of vigorous hyperventilation should be obtained. A posthyperventilation tracing may be essential for the proper evaluation of an "abnormal" test in certain circumstances, such as in women with evidence of mitral valve prolapse. A tracing should be taken at approximately 5 METs of exercise and at the time the ECG becomes abnormal according to the criteria in 4.04A. The time of onset of these abnormal changes must be noted, and the ECG tracing taken at the time should be obtained. Exercise histograms without the original tracings or legible copies are not acceptable.

Whenever electrocardiographically documented stress test data are submitted, irrespective of the type, the standardization must be inscribed on the tracings and the strips must be labeled appropriately, indicating the times recorded. The degree of exercise achieved, the blood pressure levels during the test, and any reason for terminating the test must be included in the report.

G. *Exercise testing.*

1. *When to purchase.* Since the results of a treadmill exercise test are the primary basis for adjudicating claims under 4.04, they should be included in the file whenever they have been performed. There are also circumstances under which it will be appropriate to purchase exercise tests. Generally, these are limited to claims involving chest pain which is considered to

be of cardiac origin but without corroborating ECG or other evidence of ischemic heart disease.

Exercise test should not be purchased in the absence of alleged chest pain of cardiac origin. Even in the presence of an allegation of chest pain of cardiac origin, an exercise test should not be purchased where full development short of such a purchase reveals that the impairment meets or equals any Listing or the claim can be adjudicated on some other basis.

2. *Methodology.* When an exercise test is purchased, it should be a treadmill type using a continuous progressive multistage regimen. The targeted heart rate should be not less than 85 percent of the maximum predicted heart rate unless it becomes hazardous to exercise to the heart rate or becomes unnecessary because the ECG meets the criteria in 4.04A at a lower heart rate (see also 4.00F.2). Beyond these requirements, it is prudent to accept the methodology of a qualified, competent test facility. In any case, a precise description of the protocol that was followed must be provided.

3. *Limitations of exercise testing.* Exercise testing should not be purchased for individuals who have the following: unstable progressive angina pectoris; recent onset (approximately 2 months) of angina; congestive heart failure; uncontrolled serious arrhythmias (including uncontrolled auricular fibrillation); second or third-degree heart block; Wolff-Parkinson-White syndrome; uncontrolled marked hypertension; marked aortic stenosis; marked pulmonary hypertension; dissecting or ventricular aneurysms; acute illness; limiting neurological or musculoskeletal impairments; or for individuals on medication where performance of stress testing may constitute a significant risk.

The presence of noncoronary or nonischemic factors which may influence the ECG response to exercise include hypokalemia, hyperventilation, vasoregulatory asthenia, significant anemia, left bundle branch block, and other heart disease, particulary valvular.

Digitalis may cause ST segment abnormalities at rest, during, and after exercise. Digitalis-related ST depression, present at rest, may become accentuated and result in false interpretations of the ECG taken during or after exercise test.

4. *Evaluation.* Where the evidence includes the results of a treadmill exercise test, this evidence is the primary basis for adjudicating claims under 4.04. For purposes of this Social Security disability program, treadmill exercise testing will be evaluated on the basis of the level at which the test becomes positive in accordance with the ECG criteria in § 404A. However, the significance of findings of a treadmill exercise test must be considered in light of the clinical course of the disease which may have occurred subsequent to performance of the exercise test. The criteria in 4.04B are not applicable if there is documentation of an acceptable treadmill exercise test, it there is no evidence of a treadmill exercise test or if the test is not acceptable, the criteria in 4.04B should be used. The level of exercise is considered in terms of multiples of MET's (metabolic equivalent units). One MET is the basal O_2 requirement of the body in an inactive state, sitting quiely. It is considered by most authorities to be approximately 3.5 ml. O_2/kg./min.

H. Angiographic evidence.

1. *Coronary arteriography.* This procedure is not to be purchased by the Social Security Administration. Should the results of such testing be available, the report should be considered as to the quality and kind of data provided and its applicability to the requirements of the Listing of Impairments. A copy of the report of the catheterization and ancillary studies should be obtained. The report should provide information as to the technique used, the method of assessing coronary lumen diameter, and the nature and location of any obstructive lesions.

It is helpful to know the method used, the number of projections, and whether selective engagement of each coronary vessel was satisfactorily accomplished. It is also important to know whether the injected vessel was entirely and uniformly opacified, thus avoiding the artifactual appearance of narrowing or an obstruction.

Coronary artery spasm induced by intracoronary catheterization is not to be considered as evidence of ischemic heart disease.

Estimation of the functional significance of an obstructive lesion may also be aided by description of how well the distal part of the vessel is visualized. Some patients with significant proximal coronary atherosclerosis have well-developed large collateral blood supply to the distal vessels without evidence of myocardial damage or ischemia, even under conditions of severe stress.

2. *Left ventriculography.* The report should describe the local contractility of the myocardium as may be evident from areas of hypokinesia, dyskinesia, or akinesia; and the overall contractility of the myocardium as measured by the ejection fraction.

3. *Proximal coronary arteries* (see 4.04B7) will be considered as the:

a. Right coronary artery proximal to the acute marginal branch; or

b. Left anterior descending coronary artery proximal to the first septal perforator; or

c. Left circumflex coronary artery proximal to the first obtuse marginal branch.

I. Results of other tests. Information from adequate reports of other tests such as radionuclide studies or echocardiography should be considered where that information is comparable to the requirements in the listing. An ejection fraction measured by echocardiography is not determinative, but may be given consideration in the context of associated findings.

J. Major surgical procedures. The amount of function restored and the time required to effect improvement after heart or vascular surgery vary with the nature and extent of the disorder, the type of surgery, and other individual factors. If the criteria described for heart or vascular disease are met, proposed heart or vascular surgery (coronary artery bypass procedure, valve replacement, major arterial grafts, etc.) does not militate against a finding of disability with subsequent assessment postoperatively.

The usual time after surgery for adequate assessment of the results of surgery is considered to be approximately 3 months. Assessment of the magnitude of the impairment following surgery requires adequate documentation of the pertinent evaluations and tests performed following surgery, such as an interval history and physical examination, with emphasis on those signs and symptoms which might have changed postoperatively, as well as X-rays and electrocardiograms. Where treadmill exercise tests or angiography have been performed following the surgical procedure, the results of these tests should be obtained.

Documentation of the preoperative evaluation and a description of the surgical procedure are also required. The evidence should be documented from hospital records (catheterization reports, coronary arteriographic reports, etc.) and the operative note.

Implantation of a cardiac pacemaker is not considered a major surgical procedure for purposes of this section.

K. Evaluation of peripheral arterial disease. The evaluation of peripheral arterial disease is based on medically acceptable clinical findings providing adequate history and physical examination findings describing the impairment, and on documentation of the appropriate laboratory techniques. The specific findings stated in Listing 4.13 represent the level of severity of that impairment; these findings, by themselves, are not intended to represent the basis for establishing the clinical diagnosis. The level of the impairment is based on the symptomatology, physical findings, Doppler studies before and after a standard exercise test, and/or angiographic findings.

The requirements for evaluation of peripheral arterial disease in Listing 4.13B are based on the ratio of systolic blood pressure at the ankle, determined by Doppler study, to the systolic blood pressure at the brachial artery determined at the same time. Results of plethysmographic studies, or other techniques providing systolic blood pressure determinations at the ankle, should be considered where the information is comparable to the requirements in the listing.

Listing 4.13B.1 provides for determining that the listing is met when the resting ankle/brachial systolic blood pressure ratio is less than 0.50. Listing 4.13B.2 provides additional criteria for evaluating peripheral arterial impairment on the basis of exercise studies when the resting ankle/brachial systolic blood pressure ratio is 0.50 or above. The results of excercise studies should describe the level of exercise (e.g., speed and grade of the treadmill settings), the duration of exercise, symptoms during exercise, the reasons for stopping exercise if the expected level of exercise was not attained, blood pressures at the ankle and other pertinent levels measured after exercise, and the time required to return the systolic blood pressure toward or to, the preexercise level. When exercise Doppler studies are purchased by the Social Security Administration, it is suggested that the requested exercise be on a treadmill at 2 mph, on a 12 percent grade for 5 minutes. Exercise studies should not be performed on individuals for whom exercise is contraindicated. The methodology of a

qualified, competent facility should be accepted. In any case, a precise description of the protocol that was followed must be provided.

It must be recognized that application of the criteria in Listing 4.13B may be limited in individuals who have severe calcific (Monckeberg's) sclerosis of the peripheral arteries or severe small vessel disease in individuals with diabetes mellitus.

4.01 Category of Impairments, Cardiovascular System

4.02 *Congestive heart failure (manifested by evidence of vascular congestion such as hepatomegaly, peripheral or pulmonary edema).* With:

A. Persistent congestive heart failure on clinical examination despite prescribed therapy; or

B. Persistent left ventricular enlargement and hypertrophy documented by both:

1. Extension of the cardiac shadow (left ventricle) to the vertebral column on a left lateral chest roentgenogram; and

2. ECG showing QRS duration less than 0.12 second with S_{v1} plus R_{v5} (or R_{v6}) of 35 mm. or greater *and* ST segment depressed more than 0.5 mm. *and* low, diphasic or inverted T waves in leads with tall R waves; or

C. Persistent "mitral" type heart involvement documented by left atrial enlargement shown by double shadow on PA chest roentgenogram (or characteristic distortion of barium-filled esophagus) and either:

1. ECG showing QRS duration less than 0.12 second with S_{v1} plus R_{v5} (or R_{v6}) of 35 mm. or greater *and* ST segment depressed more than 0.5 mm. *and* low, diphasic or inverted T wavers in leads with tall R waves, or

2. ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm. or greater in lead V_1 *and* progressive decrease in R/S amplitude from lead V_1 to V_5 or V_6; or

D. Cor pulmonale (non-acute) documented by both:

1. Right ventricular enlargement (or prominence of the right out-flow tract) on chest roentgenogram or fluoroscopy; and

2. ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm. or greater in lead V_1 *and* progressive decrease in R/S amplitude from lead V_1 to V_5 or V_6

4.03 *Hypertensive vascular disease.* Evaluate under 4.02 04 4.04 or under the criteria for the affected body system.

4.04 *Ischemic heart disease with chest pain or cardiac origin as described in 4.00E* With:

A. Treadmill exercise test (see 4.00 F and (G) demonstrating one of the following at an exercise level of 5 METs or less:

1. Horizontal or downsloping depression (from the standing control) of the ST segment to 1.0 mm. or greater, lasting for at least 0.08 second after the J junction, and clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or

2. Junctional depression occurring during exercise, remaining depressed (from the standing control) to 2.0 mm. or greater for at least 0.08 second after the J junction (the so-called slow upsloping ST segment), and clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or

3. Premature ventricular systoles which are multiform or bidirectional or are sequentially inscribed (3 or more); or

4. ST segment elevation (from the standing control) to 1 mm. or greater; or

5. Development of second or third degree heart block; or

B. In the absence of a report of an acceptable treadmill exercise test (see 4.00G), one of the following:

1. Transmural myocardial infarction exhibiting a QS pattern or a Q wave with amplitude at least ⅓rd of R wave and with a duration of 0.04 second or more. (If these are present in leads III and a VF only, the requisite Q wave findings must be shown, by labelled tracing, to persist on deep inspiration); or

2. Resting ECG findings showing ischemic-type (see § 4.00F1) depression of ST segment to more than 0.5 mm. in either (a) leads I and a VL and V_6 or (b) leads II and III and a VF or (c) leads V_3 through V_6; or

3. Resting ECG findings showing an ischemic configuration or current of injury (see 4.00F1) with ST segment elevation to 2 mm. or more in either (a) leads I and a VL and V_6 or (b) leads II and III and a VF or (c) leads V_3 through V_6; or

4. Resting ECG findings showing symmetrical inversion of T waves to 5.0 mm. or more in any two leads except leads III or aVR or V_1 or V_2; or

5. Inversion of T wave to 1.0 mm. or more in any of leads I, II, aVL, V_3 to V_6 *and* R wave of 5.0 mm. or more in lead aVL *and* R wave greater than S wave in lead aVF; or

6. "Double" Master Two-Step test demonstrating one of the following:

a. Ischemic depression of ST segment to more than 0.5 mm. lasting for at least 0.08 second beyond the J junction and clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or

b. Development of a second or third degree heart block; or

7. Angiographic evidence (see 4.00H) (obtained independent of Social Security disability evaluation) showing one of the following:

a. 50 percent or more narrowing of the left main coronary artery; or

b. 70 percent or more narrowing of a *proximal* coronary artery (see 4.00H3) (excluding the left main coronary artery); or

c. 50 percent or more narrowing involving a long (greater than 1 cm.) segment of a proximal coronary artery or multiple proximal coronary arteries; or

8. Akinetic or hypokinetic myocardial wall or septal motion with left ventricular ejection fraction of 30 percent of less measured by contrast or radio-isotopic ventriculographic methods; or

C. Resting ECG findings showing left bundle branch block as evidenced by QRS duration of 0.12 second or more in leads I, II, or III *and* R peak duration of 0.06 second or more in leads I, aVL, V_5, or V_6, unless there is a coronary angiogram of record which is negative (see criteria in 4.04B7).

4.05 *Recent arrhythmias* (not due to digitalis toxicity) resulting in uncontrolled repeated episodes of cardiac syncope and documented by resting or ambulatory (Holter) electrocardiography.

4.09 *Myocardiopathies, rheumatic or syphilitic heart disease.* Evaluate under the criteria in 4.02, 4.04, 4.05, or 11.04.

4.11 *Aneurysm of aorta or major branches* (demonstrated by roentgenographic evidence). With:

A. Acute or chronic dissection not controlled by prescribed medical or surgical treatment; or

B. Congestive heart failure as described under the criteria in 4.02; or

C. Renal failure as described under the criteria in 6.02; or

D. Repeated syncopal episodes.

4.12 *Chronic venous insufficiency* of the lower extremity with incompetency or obstruction of the deep venous return, associated with superficial varicosities, extensive brawny edema, stasis dermatitis, and recurrent or persistent ulceration which has not healed following at least 3 months of prescribed medical or surgical therapy.

4.13 *Peripheral arterial disease.* With:

A. Intermittent claudication with failure to visualize (on arteriogram obtained independent of Social Security disability evaluation) the common femoral or deep femoral artery in one extremity; or

B. Intermittent claudication with marked impairment of peripheral arterial circulation as determined by Doppler studies showing:

1. Resting ankle/brachial systolic blood pressure ratio of less than 0.50; or

2. Decrease in systolic blood pressure at ankle or exercise (see 4.00K) to 50 percent or less of preexercise level *and* requiring 10 minutes or more to return to prexercise level; or

C. Amputation at or above the tarsal region due to peripheral arterial disease.

5.00 Digestive System

A. *Disorders of the digestive system* which result in a marked impairment usually do so because of interference with nutrition, multiple recurrent inflammatory lesions, or complications of disease, such as fistulae, abscesses, or recurrent obstruction. Such complications usually respond to treatment. These complications must be shown to persist on repeated examinations despite therapy for a reasonable presumption to be made that a marked impairment will last for a continuous period of at least 12 months.

B. *Malnutrition or weight loss from gastrointestinal disorders.* When the primary disorder of the digestive tract has been established (e.g. enterocolitis, chronic pancreatitis, postgastrointestinal resection, or esophageal stricture, stenosis, or obstruction), the resultant interference with nutrition will be considered under the criteria in 5.08. This will apply whether the weight loss is due to primary or secondary disorders, of malabsorption, malassimilation or obstruction. However, weight loss not due to diseases of the digestive tract, but associated with psychiatric or primary endocrine or other disorders, should be evaluated under

the appropriate criteria for the underlying disorder.

C. *Surgical diversion of the intestinal tract,* including colostomy or ileostomy, are not listed since they do not represent impairments which preclude all work activity if the individual is able to maintain adequate nutrition and function of the stoma. Dumping syndrome which may follow gastric resection rarely represents a marked impairment which would continue for 12 months. Peptic ulcer disease with recurrent ulceration after definitive surgery ordinarily responds to treatment. A recurrent ulcer after definitive surgery must be demonstrated on repeated upper gastrointestinal roentgenograms or gastroscopic examinations despite therapy to be considered a severe impairment which will last for at least 12 months. Definitive surgical procedures are those designed to control the ulcer disease process (i.e., vagotomy and pyloroplasty, subtotal gastrectomy, etc.). Simple closure of a perforated ulcer does not constitute definitive surgical therapy for peptic ulcer disease.

5.01 Category of Impairments, Digestive System

5.02 *Recurrent upper gastrointestinal hemorrhage from undetermined cause* with anemia manifested by hematocrit of 30 percent or less on repeated examinations.

5.03 *Stricture, stenosis, or obstruction of the esophagus (demonstrated by X-ray or endoscopy)* with weight loss as described under § 5.08.

5.04 *Peptic ulcer disease (demonstrated by X-ray or endoscopy)* With:

A. Recurrent ulceration after definitive surgery persistent despite therapy; or

B. Inoperable fistula formation; or

C. Recurrent obstruction demonstrated by X-ray or endoscopy; or

D. Weight loss as described under § 5.08.

5.05 *Chronic liver disease (e.g., portal, postnecrotic , or biliary cirrhosis; chronic active hepatitis; Wilson's disease).* With:

A. Esophageal varices (demonstrated by X-ray or endoscopy) with a documented history of massive hemorrhage attributable to these varices. Consider under a disability for 3 years following the last massive hemorrhage; thereafter, evaluate the residual impairment; or

B. Performance of a shunt operation for esophageal varices. Consider under a disability for 3 years following surgery; thereafter, evaluate the residual impairment; or

C. Serum bilirubin of 2.5 mg. per deciliter (100 ml.) or greater persisting on repeated examinations for at least 5 months; or

D. Ascites, not attributable to other causes, recurrent or persisting for at least 5 months, demonstrated by abdominal paracentesis or associated with persistent hypoalbuminemia of 3.0 gm. per deciliter (100 ml.) or less; or

E. Hepatic encephalopathy. Evaluate under the criteria in listing 12.02; or

F. Confirmation of chronic liver disease by liver biopsy (obtained independent of Social Security disability evaluation) and one of the following:

1. Ascites not attributable to other causes, recurrent or persisting for at least 3 months, demonstrated by abdominal paracentesis or associated with persistent hypoalbuminemia of 3.0 gm. per deciliter (100 ml.) or less; or

2. Serum bilirubin of 2.5 mg. per deciliter (100 ml) or greater on repeated examinations for at least 3 months; or

3. Hepatic cell necrosis or inflammation, persisting for at least 3 months, documented by repeated abnormalities of prothrombin time and enzymes indicative of hepatic dysfunction.

5.06 [*Chronic ulcerative or granulomatous colitis (demonstrated by endoscopy, barium enema, biopsy, or operative findings).* With:

A. Recurrent bloody stools documented on repeated examinations and anemia manifested by hematocrit of 30 percent or less on repeated examinations; or

B. Persistent or recurrent systemic manifestations, such as arthritis, iritis, fever, or liver dysfunction, not attributable to other causes; or

C. Intermittent obstruction due to intractable abscess, fistula formation, or stenosis; or

D. Recurrence of findings of A, B, or C above after total colectomy; or

E. Weight loss as described under § 5.08.

5.07 *Regional enteritis (demonstrated by operative findings, barium studies, biopsy, or endoscopy).* With:

A. Persistent or recurrent intestinal obstruction evidenced by abdominal pain, distention, nausea, and vomiting and accompanied by stenotic areas of small bowel with proximal intestinal dilation; or

B. Persistent or recurrent systemic manifestations such as arthritis, iritis, fever, or liver dysfunction, not attributable to other causes; or

C. Intermittent obstruction due to intractable abscess or fistula formation; or

D. Weight loss as described under § 5.08.

5.08 *Weight loss due to any persisting gastrointestinal disorder:* (The following weights are to be demonstrated to have persisted for at least 3 months despite prescribed therapy and expected to persist at this level for at least 12 months.) With:

A. Weight equal to or less than the values specified in Table I or II; or

B. Weight equal to or less than the values specified in Table III or IV and one of the following abnormal findings on repeated examinations:

1. Serum albumin of 3.0 gm. per deciliter (100 ml.) or less; or

2. Hematocrit of 30 percent or less; or

3. Serum calcium of 8.0 mg. per deciliter (100 ml.) (4.0 mEq./L) or less; or

4. Uncontrolled diabetes mellitus due to pancreatic dysfunction with repeated hyperglycemia, hypoglocemia, or ketosis; or

5. Fat in stool of 7 gm. or greater per 24-hour stool specimen; or

6. Nitrogen in stool of 3 gm. or greater per 24-hour specimen; or

7. Persistent or recurrent ascites or edema not attributable to other causes.

Tables of weight reflecting malnutrition scaled according to height and sex—To be used only in connection with 5.08.

TABLE I.—MEN

Height (inches) [1]	Weight (pounds)
61	90
62	92
63	94
64	97
65	99
66	102
67	106
68	109
69	112
70	115
71	118
72	122
73	125
74	128
75	131
76	134

[1] Height measured without shoes.

TABLE II.—WOMEN

Height (inches) [1]	Weight (pounds)
58	77
59	79
60	82
61	84
62	86
63	89
64	91
65	94
66	98
67	101
68	104
69	107
70	110
71	114
72	117
73	120

[1] Height measured without shoes.

TABLE III.—MEN

Height (inches) [1]	Weight (pounds)
61	95
62	98
63	100
64	103
65	106
66	109
67	112
68	116
69	119
70	122
71	126
72	129
73	133
74	136
75	139
76	143

[1] Height measured without shoes.

TABLE IV.—WOMEN

Height (inches) [1]	Weight (pounds)
58	82
59	84
60	87
61	89
62	92
63	94
64	97
65	100
66	104
67	107
68	111
69	114
70	117
71	121
72	*24

TABLE IV.—WOMEN—Continued

Height (inches) [1]	Weight (pounds)
73	128

[1] Height measured without shoes.

6.00 Genito-Urinary System

A. *Determination of the presence of chronic renal disease will be based upon* (1) a history, physical examination, and laboratory evidence of renal disease, and (2) indications of its progressive nature or laboratory evidence of deterioration of renal function.

B. *Nephrotic Syndrome.* The medical evidence establishing the clinical diagnosis must include the description of extent of tissue edema, including pretibial, periorbital, or presacral edema. The presence of ascites, pleural effusion, pericardial effusion, and hydroarthrosis should be described if present. Results of pertinent laboratory tests must be provided. If a renal biopsy has been performed, the evidence should include a copy of the report of microscopic examination of the specimen. Complications such as severe orthostatic hypotension, recurrent infections or venous thromboses should be evaluated on the basis of resultant impairment.

C. *Hemodialysis, peritioneal dialysis, and kidney transplantation.* When an individual is undergoing periodic dialysis because of chronic renal disease, severity of impairment is reflected by the renal function prior to the institution of dialysis.

The amount of function restored and the time required to effect improvement in an individual treated by renal transplant depend upon various factors, including adequacy of post transplant renal function, incidence and severity of renal infection, occurrence of rejection crisis, the presence of systemic complications (anemia, neunropathy, etc.) and side effects of corticosteroids or immunosuppressive agents. A convalesent period of at least 12 months is required before it can be reasonably determined whether the individual has reached a point of stable medical improvement.

D. *Evaluate associated disorders and complications* according to the appropriate body system Listing.

6.01 Category of Impairments, Genito-Urinary System

6.02 Impairment of renal function, due to any chronic renal disease expected to last 12 months (e.g., hypertensive vascular disease, chronic nephritis, nephrolithiasis, polycystic disease, bilateral hydronephrosis, etc.) With:

A. Chronic hemodialysis or peritoneal dialysis necessitated by irreversible renal failure; or

B. Kidney transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 6.00C); or

C. Persistent elevation of serum creatine in to 4 mg. per deciliter (100 ml.) or greater or reduction of creatinine clearance to 20 ml. per minute (29 liters/24 hours) or less, over at least months, with one of the following:

1. Renal osteodystrophy manifested by severe bone pain and appropriate radiographic abnormalities (e.g., osteitis fibrosa, marked osteoporosis, pathologic fractures); or

2. A clinical episode of pericarditis; or

3. Persistent motor or sensory neuropathy; or

4. Intractable pruritus; or

5. Persistent fluid overload syndrome resulting in diastolic hypertension (110 mm. or above) or signs of vascular congestion; or

6. Persistent anorexia with recent weight loss and current weight meeting the values in 5.08, Table III or IV; or

7. Persistent hematocrits of 30 percent or less.

6.06 *Nephrotic syndrome, with significant anasarca, persistent for at least 3 months despite prescribed therapy.* With:

A. Serum albumin of 3.0 gm. per deciler (100 ml.) or less *and* protenuria of 3.5 gm. per 24 hours or greater; or

B. Proteinuria of 10.0 gm. per 24 hours or greater.

7.00 Hemic and Lymphatic System

A. *Impairment caused by anemia* should be evaluated according to the ability of the individual to adjust to the reduced oxygen carrying capacity of the blood. A gradual reduction in red cell mass, even to very low values, is often well tolerated in individuals with a healthy cardiovascular system.

B. *Chronicity is indicated by* persistence of the condition for at least 3 months. The laboratory findings cited must reflect the values reported on more than one examination over that 3-month period.

C. *Sickle cell disease* refers to a chronic hemolytic anemia associated with sickle cell hemoglobin, either homozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).

Appropriate hematologic evidence for sickle cell disease, such as hemoglobin electrophoresis, must be included. Vasoocclusive or aplastic episodes should be documented by description of severity, frequency, and duration.

Major visceral episodes include meningitis, osteomyelitis, pulmonary infections or infarctions, cerebrovascular accidents, congestive heart failure, genito-urinary involvement, etc.

D. *Coagulation defects.* Chronic inherited coagulation disorders must be documented by appropriate laboratory evidence. Prophylactic therapy such as with antihemophilic globulin (AHG) concentrate does not in itself imply severity.

E. *Acute leukemia.* Initial diagnosis of acute leukemia must be based upon definitive bone marrow pathologic evidence. Recurrent disease may be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination. The pathology report must be included.

The acute phase of chronic myelocytic (granulocytic) leukemia should be considered under the requirements for acute leukemia.

The criteria in 7.11 contain the designated duration of disability implicit in the finding of a listed impairment. Following the designated time period, a documented diagnosis itself is no longer sufficient to establish a marked impairment. The level of any remaining impairment must be evaluated on the basis of the medical evidence.

7.01 Category of Impairments, Hemic and Lymphatic System

7.02 *Chronic anemia (hematocrit persisting at 30 percent or less due to any cause).* With:

A. Requirement of one or more blood transfusions on an average of at least once every 2 months; or

B. Evaluation of the resulting impairment under criteria for the affected body system.

7.05 *Sickle cell disease, or one of its variants.* With:

A. Documented painful (thrombotic) crises occurring at least there times during the 5 months prior to adjudication; or

B. Requiring extended hospitalization (beyond emergency care) at least three times during the 12 months prior to adjudication; or

C. Chronic, severe anemia with persistence of hematocrit of 26 percent or less; or

D. Evaluate the resulting impairment under the criteria for the affected body system.

7.06 *Chronic thrombocytopenia (due to any cause)* with platelet counts repeatedly below 40,000/cubic millimeter. With:

A. At least one spontaneous hemorrhage, requiring transfusion, within 5 months prior to adjudication; or

B. Intracranial bleeding within 12 months prior to adjudication.

7.07 *Hereditary telangiectasia* with hemorrhage requiring transfusion at least three times during the 5 months prior to adjudication.

7.08 *Coagulation defects (hemophilia or a similar disorder)* with spontaneous hemorrhage requiring transfusion at least three times during the 5 months prior to adjudication.

7.09 *Polycythemia vera (with erythrocytosis, splenomegaly, and leukocytosis or thrombocytosis).* Evaluate the resulting impairment under the criteria for the affected body system.

7.10 *Myelofibrosis (myeloproliferative syndrome).* With:

A. Chronic anemia. Evaluate according to the criteria of § 7.02; or

B. Documented recurrent systemic bacterial infections occurring at least 3 times during the 5 months prior to adjudication; or

C. Intractable bone pain with radiologic evidence of osteosclerosis.

7.11 *Acute leukemia.* Consider under a disability for 2½ years from the time of initial diagnosis.

7.12 *Chronic leukemia.* Evaluate according to the criteria of 7.02, 7.06, 7.10B, 7.11, 7.17, or 13.06A.

7.13 *Lymphomas.* Evaluate under the criteria in 13.06A.

7.14 *Macroglobulinemia or heavy chain disease,* confirmed by serum or urine protein electrophoresis or immunoelectrophoresias. Evaluate impairment under criteria for affected body system or under 7.02, 7.06, or 7.08.

7.15 *Chronic granulocytopenia (due to any cause).* With both A and B:

A. Absolute neutrophil counts repeatedly below 1,000 cells/cubic millimeter; and

B. Documented recurrent systemic bacterial infections occurring at least 3 times during the 5 months prior to adjudication.

7.16 *Myeloma (confirmed by appropriate serum or urine protein electrophoresis and bone marrow findings).* With:

A. Radiologic evidence of bony involvement with intractable bone pain; or

B. Evidence of renal impairment as described in 6.02; or

C. Hypercalcemia with serum calcium levels persistently greater than 11 mg. per deciliter (100 ml.) for at least 1 month despite prescribed therapy; or

D. Plasma cells (100 or more cells/cubic millimeter) in the peripheral blood.

7.17 *Aplastic anemias or hematologic malignancies (excluding acute leukemia):* With bone marrow transplantation. Consider under a disability for 12 months following transplantation; thereafter, evaluate according to the primary characteristics of the residual impairment.

8.00 Skin

A. *Skin lesions* may result in a marked, long-lasting impairment if they involve extensive body areas or critical areas such as the hands or feet and become resistant to treatment. These lesions must be shown to have persisted for a sufficient period of time despite therapy for a reasonable presumption to be made that a marked impairment will last for a continuous period of at least 12 months. The treatment for some of the skin diseases listed in this section may require the use of high dosage of drugs with possible serious side effects; these side effects should be considered in the overall evaluation of impairment.

B. *When skin lesions are associated with systemic disease* and where that is the predominant problems, evaluation should occur according to the criteria in the appropriate section. Disseminated (systemic) lupus erythematosus and scleroderma usually involve more than one body system and should be evaluated under 10.04 and 10.05. Neoplastic skin lesions should be evaluated under 13.00ff. When skin lesions (including burns) are associated with contractures or limitation of joint motion, that impairment should be evaluated under 1.00ff.

8.01 Category of Impairments, Skin

8.02 *Exfoliative dermatitis, ichthyosis, ichthyosiform erythroderma.* With extensive lesions not responding to prescribed treatment.

8.03 *Pemphigus, erythema multiforme bullosum, bullous pemphigoid, dermatitis herpetiformis.* With extensive lesions not responding to prescribed treatment.

8.04 *Deep mycotic infections. With extensive fungating, ulcerating lesions not responding to prescribed treatment.*

8.05 *Psoriasis, atopic dermatitis, dyshidrosis.* With extensive lesions, including involvement of the hands or feet which impose a marked limitation of function and which are not responding to prescribed treatment.

8.06 *Hydradenitis suppurative, acne conglobata.* With extensive lesions involving the axillae or perineum not responding to prescribed medical treatment and not to surgical treatment.

9.00 Endocrine System

Cause of impairment. Impairment is caused by overproduction or underproduction of hormones, resulting in structural or functional changes in the body. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.

9.01 Category of Impairments, Endocrine

9.02 *Thyroid Disorders.* With:

A. Progressive exophthalmos as measured by exophthalmometry; or

B. Evaluate the resulting impairment under the criteria for the affected body system.

9.03 *Hyperparathyroidism.* With:

A. Generalized decalcification of bone on X-ray study and elevation of plasma calcium to 11 mg. per deciliter (100 ml.) or greater; or

B. A resulting impairment. Evaluate according to the criteria in the affected body system.

9.04 *Hypoparathyroidism.* With:

A. Severe recurrent tetany; or

B. Recurrent generalized convulsions; or

C. Lenticular cataracts. Evaluate under the criteria in 2.00ff.

9.05 *Neurohypophyseal insufficiency (diabetes insipidus).* With urine specific gravity of 1.005 or below, persistent for at least 3 months and recurrent dehydration.

9.06 *Hyperfunction of the adrenal cortex.* Evaluate the resulting impairment under the criteria for the affected body system.

9.08 *Diabetes mellitus.* With:

A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or

B. Acidosis occurring at least on the average of once every 2 months documented by appropriate proporiate blood chemical tests (pH or pCO2 or bicarbonate levels); or

C. Amputation at, or above, the tarsal region due to diabetic necrosis or peripheral arterial disease; or

D. Retinitis proliferans; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

10.00 Multiple Body Systems

A. The impairments included in this section usually involve more than a single body system.

B. Long-term obesity will usually be associated with disorders in the musculoskeletal, cardiovascular, peripheral vascular, and pulmonary systems, and the advent of such disorders is the major cause of impairment. Extreme obesity results in restrictions imposed by body weight and the additional restrictions imposed by disturbances in other body systems.

10.01 Category of Impairments, Multiple Body Systems

10.02 *Hansen's disease (leprosy).* As active disease or consider as "under a disability" while hospitalized.

10.03 *Polyarteritis or periarteritis nodosa (established by biopsy).* With signs of generalized arterial involvement.

10.04 *Disseminated lupus erythematosus (established by a positive LE preparation or biopsy or positive ANA test).* With frequent exacerbations demonstrating involvement of renal or cardiac or pulmonary or gastrointestinal or central nervous systems.

10.05 *Scleroderma or progressive systemic sclerosis (the diffuse or generalized form).* With:

A. Advanced limitation of use of hands due to sclerodactylia or limitation in other joints; or

B. Significant visceral manifestations of digestive, cardiac, or pulmonary impairment.

10.10 *Obesity.* Weight equal to or greater than the values specified in Table I for males, Table II for females (100 percent above desired level) and one of the following:

A. History of pain and limitation of motion in any weight bearing joint or spine (on physical examination) associated with X-ray evidence of arthritis in a weight bearing joint or spine; or

B. Hypertension with diastolic blood pressure persistently in excess of 100 mm. Hg measured with appropriate size cuff; or

C. History of congestive heart failure manifested by past evidence of vascular congestion such as hepatomegaly, peripheral or pulmonary edema; or

D. Chronic venous insufficiency with superficial varicosities in a lower extremity with pain on weight bearing and persistent edema; or

E. Respiratory disease with total forced vital capacity equal to or less than 2.0 L. or a level of hypoxemia at rest equal to or less than the values specified in Table III–A or III–B or III–C.

TABLE I.—MEN

Height without shoes (inches)	Weight (pounds)
60	246
61	252
62	258
63	264
64	270
65	276
66	284
67	294
68	302
69	310
70	318
71	328
72	336
73	346
74	356
75	364
76	374

TABLE II.—WOMEN

Height without shoes (inches)	Weight (pounds)
56	208
57	212
58	218
59	224
60	230
61	236
62	242
63	250
64	258
65	266
66	274

TABLE II.—WOMEN—Continued

Height without shoes (inches)	Weight (pounds)
67	282
68	290
69	298
70	306
71	314
72	322

TABLE III.—A

[Applicable at test sites less than 3,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
30 or below	65
31	64
32	63
33	62
34	61
35	60
36	59
37	58
38	57
39	56
40 or above	55

TABLE III.—B

[Applicable at test sites 3,000 through 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
30 or below	60
31	59
32	58
33	57
34	56
35	55
36	54
37	53
38	52
39	51
40 or above	50

TABLE III.—C

[Applicable at test sites over 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
30 or below	55
31	54
32	53
33	52
34	51
35	50
36	49
37	48
38	47
39	46
40 or above	45

11.00 Neurological

A. *Convulsive disorders.* In convulsive disorders, regardless of etiology degree of impairment will be determined according to type, frequency, duration, and sequelae of seizures. At least one detailed description of a typical seizure is required. Such descripiton includes the presence or absence of aura, tongue bites, sphincter control, injuries associated with the attack, and postictal phenomena.The reporting physician should indicate the extent to which description of seizures relfects his own observations and the source of ancillary information. Testimony of persons other than the claimant is essential for description of type and frequency of seizures if professional observation is not available.

Documentation of epilepsy should include at least one electronencephalogram (EEG).

Under 11.02 and 11.03, the criteria can be applied only if the impairment persists despite the fact that the individual is following prescribed anticonvulsive treatment. Adherence to prescribed anticonvulsive therepy can ordinarily be determined from objective clinical findings in the report of the physican currently providing treatment for epilepsy. Determination of blood levels of phenytoin sodium or other anticonvulsive drugs may serve to indicate whether the prescribed medication is being taken. When seizures are occurrring at the frequency stated in 11.02 or 11.03, evalution of the severity of the impairment must include consideration of the serum drug levels. Should serum drug levels appear therapeutically inadequate, consideration should be given as to whether this is caused by individual idiosyncrasy in absorption of metabolism of the drug. Blood drug levels should be evaluated in conjunction with all the other evidence to determine the extent of compliance. When the reported blood drug levels are low, therefore, the information obtained from the treating source should include the physician's statement as to why the levels are low and the results of any relevant diagnostic studies concerning the blood levels. Where adequate seizure control is obtained only with unusually large doses, the possibility of impairment resulting from the side effects of this medication must be also assessed. Where documentation shows that use of alcohol or drugs affects adherence to prescribed therapy or may play a part in the precipitation of seizures, this must also be consideration in the overall assessment of impairment level.

B. *Brain tumors.* The diagnosis of malignant brain tumors must be established, and the persistence of the tumor should be evaluated, under the criteria described in 13.00B and C for neoplastic disease.

In histologically malignant tumors, the pathological diagnosis alone will be the decisive criterion for severity and expected duration (see 11.05A). For other tumors of the brain, the severity and duration of the impairment will be determined on the basis of symptoms, signs, and pertintent laboratory findings (11.05B).

C. *Persistent disorganization of motor function* in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory distrubances (any or all of which may be due to cerebral cerbellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combination, frequently provides the sole or partial basis for decision in cases of neurological impairment. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands, and arms.

D. *In conditions which are episodic in character,* such as multiple sclerosis or myasthenia gravis, consideration should be given to frequency and duration of exacerbations, length of remissions, and permanent residuals.

E. *Multiple sclerosis.* The major criteria for evaluating impairment caused by multiple sclerosis are discussed in listing 11.09. Paragraph A provides criteria for evaluating disorganization of motor function and gives reference to 11.04B (11.04B then refers to 11.00C). Paragraph B provides references to other listings for evaluating visual or mental impairments caused by multiple sclerosis. Paragraph C provides criteria for evaluating the impairment of individuals who do not have muscle weakness or other significant disorganization of motor function at rest, but who do develop muscle weakness on activity as a result of fatigue.

Use of the criteria in 11.09C is dependent upon (1) documenting a diagnosis of multiple sclerosis, (2) obtaining a description of fatigue considered to be characteristic of multiple sclerosis, and (3) obtaining evidence that the system has actually become fatigued. The evaluation of the magnitude of the impairment must consider the degree of exercise and the severity of the resulting muscle weakness.

The criteria in 11.09C deals with motor abnormalities which occur on activity. If the disorganization of motor function is present at rest, paragraph A must be used, taking into account any further increase in muscle weakness resulting from activity.

Sensory abnormalities may occur, particularly involving central visual acuity. The decrease in visual acuity may occur after brief attempts at activity involving near vision, such as reading. This decrease in visual acuity may not persist when the specific activity is terminated, as with rest, but is predictably reproduced with resumption of the activity. The impairment of central visual acuity in these cases should be evaluated under the criteria in listing 2.02, taking into account the fact that the decrease in visual acuity will wax and wane.

Clarification of the evidence regarding central nervous system dysfunction responsible for the symptoms may require supporting technical evidence of functional impairment such as evoked response tests during exercise.

11.01 Category of Impairments, Neurological

11.02 *Epilepsy—major motor seizures, (grand mal or psychomotor), documented by EEG and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment.* With:

A. Daytime episodes (loss of consciousness and convulsive seizures) or

B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

11.03 *Epilepsy—Minor motor seizures (petit mal, psychomotor, or focal),*

documented by EEG and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment. With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

11.04 *Central nervous system vascular accident.* With one of the following more than 3 months post-vascular accident:

A. Sensory or motor aphasia resulting in ineffective speech or communication; or

B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).

11.05 *Brain tumors.*

A. Malignant gliomas (astrocytoma—grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, or primary sarcoma; or

B. Astrocytoma (grades I and II), meningioma, pituitary tumors, oligodendroglioma, ependymoma, clivus chordoma, and benign tumors. Evaluate under 11.02, 11.03, 11.04 A, or B, or 12.02.

11.06 *Parkinsonian syndrome* with the following signs: Significant rigidity, brady kinesia, or tremor in two extremities, which, singly or in combination, result in sustained disturbance of gross and dexterous movements, or gait and station.

11.07 *Cerebral palsy.* With:

A. IQ of 69 or less; or

B. Abnormal behavior patterns, such as destructiveness or emotional instability; or

C. Significant interference in communication due to speech, hearing, or visual defect; or

D. Disorganization of motor function as described in 11.04B.

11.08 *Spinal cord or nerve root lesions, due to any cause* with disorganization of motor function as described in 11.04B.

11.09 *Multiple sclerosis.* With:

A. Disorganization of motor function as described in 11.04B; or

B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or

C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

11.10 *Amyotrophic lateral sclerosis. With:*

A. Significant bulbar signs; or

B. Disorganization of motor function as described in 11.04B.

11.11 *Anterior poliomyelitis.* With:

A. Persistent difficulty with swallowing or breathing; or

B. Unintelligible speech; or

C. Disorganization of motor function as described in 11.04B.

11.12 *Myasthenia gravis.* With:

A. Significant difficulty with speaking, swallowing, or breathing while on prescribed therapy; or

B. Significant motor weakness of muscles of extremities on repetitive activity against resistance while on prescribed therapy.

11.13 *Muscular dystrophy* with disorganization of motor function as described in 11.04B.

11.14 *Peripheral neuropathies.*

With disorganization of motor function as described in 11.04B, in spite of prescribed treatment.

11.15 *Tabes dorsalis.*

With:

A. Tabetic crises occurring more frequently than once monthly; or

B. Unsteady, broad-based or ataxic gait causing significant restriction of mobility substantiated by appropriate posterior column signs.

11.16 *Subacute combined cord degeneration (pernicious anemia) with disorganization of motor function as decribed in 11.04B or 11.15B, not significantly improved by prescribed treatment.*

11.17 *Degenerative disease not elsewhere such as Huntington's chorea, Friedreich's ataxia, and spino-cerebellar degeneration.* With:

A. Disorganization of motor function as described in 11.04B or 11.15B; or

B. Chronic brain syndrome. Evaluate under 12.02.

11.18 *Cerebral trauma:*

Evaluate under the provisions of 11.02, 11.03, 11.04 and 12.02, as applicable.

11.19 *Syringomyelia.*

With:

A. Significant bulbar signs; or

B. Disorganization of motor function as described in 11.04B.

12.00 *Mental Disorders.*

* * * * *

13.00 *Neoplastic Diseases, Malignant.*

A. *Introduction:* The determination of the level of impairment resulting from malignant tumors is made from a consideration of the site of the lesion, the histogenesis of the tumor, the extent of involvement, the apparent adequacy and response to therapy (surgery, irradiation, hormones, chemotherapy, etc.), and the magnitude of the post therapeutic residuals.

B. *Documentation:* The diagnosis of malignant tumors should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen. If these documents are not obtainable, then the summary of hospitalization or a report from the treating physician must include details of the findings at surgery and the results of the pathologist's gross and microscopic examination of the tissues.

For those cases in which a disabling impairment was not established when therapy was begun but progression of the disease is likely, current medical evidence should include a report of a recent examination directed especially at local or regional recurrence, soft part or skeletal metastases, and significant posttherapeutic residuals.

C. *Evaluation.* Usually, when the malignant tumor consists of a local lesion with metastases to the regional lymph nodes which apparently has been completely excised, imminent recurrence or metastases is not anticipated. A number of exceptions are noted in the specific Listings. For adjudicative purposes, "distant metastases" or "metastases beyond the regional lymph nodes" refers to metastasis beyond the lines of the usual radical en bloc resection.

Local or regional recurrence after radical surgery or pathological evidence of incomplete excision by radical surgery is to be equated with unresectable lesions (except for carcinoma of the breast, 13.09C) and, for the purposes of our program, may be evaluated as "inoperable."

Local or regional recurrence after incomplete excision of a localized and still completely resectable tumor is not to be equated with recurrence after radical surgery. In the evaluation of lymphomas, the tissue type and site of involvement are not necessarily indicators of the degree of impairment.

When a malignant tumor has metastasized beyond the regional lymph nodes, the impairment will usually be found to meet the requirements of a specific listing. Exceptions are hormone-dependent tumors, isotope-sensitive metastases, and metastases from seminoma of the testicles which are controlled by definitive therapy.

When the original tumor and any metastases have apparently disappeared and have not been evident for 3 or more years, the impairment does not meet the criteria under this body system.

D. *Effects of therapy.* Significant posttherapeutic residuals, not specifically included in the category of impairments for malignant neoplasms, should be evaluated according to the affected body system.

Where the impairment is not listed in the Listing of Impairments and is not medically equivalent to a listed impairment, the impact of any residual impairment including that caused by therapy must be considered. The therapeutic regimen and consequent adverse response to therapy may vary widely; therefore, each case must be considered on an individual basis. It is essential to obtain a specific description of the therapeutic regimen, including the drugs given, dosage, frequency of drug administration, and plans for continued drug administration. It is necessary to obtain a description of the complications or any other adverse response to therapy such as nausea, vomiting, diarrhea, weakness, dermatologic disorders, or reactive mental disorders. Since the severity of the adverse effects of anticancer chemotherapy may change during the period of drug administration, the decision regarding the impact of drug therapy should be based on a sufficient period of therapy to permit proper consideration.

E. *Onset.* To establish onset of disability prior to the time a malignancy is first demonstrated to be inoperable or beyond control by other modes of therapy (and prior evidence is nonexistent) requires medical

judgment based on medically reported symptoms, the type of the specific malignancy, its location, and extent of involvement when first demonstrated.

13.01 Category of Impairments, Neoplastic Diseases—Malignant

13.02 *Head and neck* (except salivary glands—13.07, thyroid gland—13.08, and mandible, maxilla, orbit, or temporal fossa—13.11):
A. Inoperable; or
B. Not controlled by prescribed therapy; or
C. Recurrent after radical surgery or irradiation; or
D. With distant metastases; or
E. Epidermoid carcinoma occurring in the pyriform sinus or posterior third of the tongue.

13.03 *Sarcoma of Skin:*
A. Angiosarcoma with metastases to regional lymph nodes or beyond; or
B. Mycosis fungoides with metastases to regional lymph nodes, or with visceral involvement.

13.04 *Sarcoma of soft parts:* Not controlled by prescribed therapy.

13.05 *Malignant melanoma:*
A. Recurrent after wide excision; or
B. With metastases to adjacent skin (satellite lesions) or elsewhere.

13.06 *Lymph nodes:*
A. Hodgkin's disease or non-Hodgkin's lymphoma with progressive disease not controlled by prescribed therapy; or
B. Metastatic carcinoma in a lymph node (except for epidermoid carcinoma in a lymph node in the neck) where the primary site is not determined after adequate search; or
C. Epidermoid carcinoma in a lymph node in the neck not responding to prescribed therapy.

13.07 *Salivary glands*—carcinoma or sarcoma with metastases beyond the regional lymph nodes.

13.08 *Thyroid gland*—carcinoma with metastases beyond the regional lymph nodes, not controlled by prescribed therapy.

13.09 *Breast:*
A. Inoperable carcinoma; or
B. Inflammatory carcinoma; or
C. Recurrent carcinoma, except local recurrence controlled by prescribed therapy; or
D. Distant metastases from breast carcinoma (bilateral breast carcinoma, synchronous or metachronous is usually primary in each breast); or
E. Sarcoma with metastases anywhere.

13.10 *Skeletal system* (exclusive of the jaw):
A. Malignant primary tumors with evidence of metastases and not controlled by prescribed therapy; or
B. Metastatic carcinoma to bone where the primary site is not determined after adequate search.

13.11 *Mandible, maxilla, orbit, or temporal fossa:*
A. Sarcoma of any type with metastases; or
B. Carcinoma of the antrum with extension into the orbit or ethmoid or sphenoid sinus, or with regional or distant metastases; or
C. Orbital tumors with intracranial extension; or
D. Tumors of the temporal fossa with perforation of skull and meningeal involvement; or
E. Adamantinoma with orbital or intracranial infiltration; or
F. Tumors of Rathke's pouch with infiltration of the base of the skull or metastases.

13.12 *Brain or spinal cord:*
A. Metastatic carcinoma to brain or spinal cord.
B. Evaluate other tumors under the criteria described in 11.05 and 11.06.

13.13 *Lungs.*
A. Unresectable or with incomplete excision; or
B. Recurrence or metastases after resection; or
C. Oat cell (small cell) carcinoma; or
D. Squamous cell carcinoma, with metastases beyond the hilar lymph nodes; or
E. Other histologic types of carcinoma, including undifferentiated and mixed-cell types (but excluding oat cell carcinoma, 13.13C, and squamous cell carcinoma, 13.13D), with metastases to the hilar lymph nodes.

13.14 *Pleura or mediastinum:*
A. Malignant mesothelioma of pleura; or
B. Malignant tumors, metastatic to pleura; or
C. Malignant primary tumor of the mediastinum not controlled by prescribed therapy.

13.15 *Abdomen:*
A. Generalized carcinomatosis; or
B. Retroperitoneal cellular sarcoma not controlled by prescribed therapy; or
C. Ascites with demonstrated malignant cells.

13.16 *Esophagus or stomach:*
A. Carcinoma or sarcoma of the esophagus; or
B. Carcinoma of the stomach with metastases to the regional lymph nodes or extension to surrounding structure; or
C. Sarcoma of stomach not controlled by prescribed therapy; or
D. Inoperable carcinoma; or
E. Recurrence or metastases after resection.

13.17 *Small intestine:*
A. Carcinoma, sarcoma, or carcinoid tumor with metastases beyond the regional lymph nodes; or
B. Recurrence of carcinoma, sarcoma, or carcinoid tumor after resection; or
C. Sarcoma, not controlled by prescribed therapy.

13.18 *Large intestine* (from ileocecal valve to and including anal canal)—Carcinoma or sarcoma.
A. Unresectable; or
B. Metastases beyond the regional lymph nodes, or
C. Recurrence or metastases after resection.

13.19 *Liver or gallbladder:*
A. Primary or metastatic malignant tumors of the liver; or
B. Carcinoma of the gallbladder; or
C. Carcinoma of the bile ducts.

13.20 *Pancreas:*
A. Carcinoma except islet cell carcinoma; or
B. Islet cell carcinoma which is unresectable and physiologically active.

13.21 *Kidneys, adrenal glands, or ureters—carcinoma:*
A. Unresectable; or
B. With hematogenous spread to distant sites; or
C. With metastases to regional lymph nodes.

13.22 *Urinary bladder—carcinoma.* With:
A. Infiltration beyond the bladder wall; or
B. Metastases to regional lymph nodes; or
C. Unresectable; or
D. Recurrence after total cystectomy; or
E. Evaluate renal impairment after total cystectomy under the criteria in 6.02.

13.23 *Prostate gland*—carcinoma not controlled by prescribed therapy.

13.24 *Testicles:*
A. Choriocarcinoma; or
B. Other malignant primary tumors with progressive disease not controlled by prescribed therapy.

13.25 *Uterus*—carcinoma or sarcoma (corpus or cervix).
A. Inoperable and not controlled by prescribed therapy; or
B. Recurrent after total hysterectomy; or
C. Total pelvic exenteration

13.26 *Ovaries*—all malignant, primary or recurrent tumors. With:
A. Ascites with demonstrated malignant cells; or
B. Unresectable infiltration; or
C. Unresectable metastases to omentum or elsewhere in the peritoneal cavity; or
D. Distant metastases.

13.27 *Leukemia:* Evaluate under the criteria of 7.00ff, Hemic and Lymphatic Sytem.

13.28 *Uterine (Fallopian) tubes—carcinoma or sarcoma:*
A. Unresectable, or
B. Metastases to regional lymph nodes.

13.29 *Penis—carcinoma with metastases to regional lymph nodes.*

13.30 *Vulva—carcinoma, with distant metastases.*

Part B

Medical criteria for the evaluation of impairments of children under age 18 (where criteria in Part A do not give appropriate consideration to the particular disease process in childhood).

Sec.
100.00 Growth Impairment.

Sec.
101.00 Musculoskeletal System.
102.00 Special Senses and Speech.
103.00 Respiratory System.
104.00 Cardiovascular System.
105.00 Digestive System.
106.00 Genito-Urinary System.
107.00 Hemic and Lymphatic System.
109.00 Endocrine System.
110.00 Multiply Body Systems.
111.00 Neurological.
112.00 Mental and Emotional Disorders.
113.00 Neoplastic Diseases, Malignant.

100.00 Growth impairment

A. *Impairment of growth* may be disabling in itself or it may be an indicator of the severity of the impairment due to a specific disease process.

Determinations of growth impairment should be based upon the comparison of current height with at least three previous determinations, including length at birth, if available. Heights (or lengths) should be plotted on a standard growth chart, such as derived from the National Center for Health Statistics: NCHS Growth Charts. Height should be measured without shoes. Body weight corresponding to the ages represented by the heights should be furnished. The adult heights of the child's natural parents and the heights and ages of siblings should also be furnished. This will provide a basis upon which to identify those children whose short stature represents a familial characteristic rather than a result of disease. This is particularly true for adjudication under 100.02B.

B. *Bone age determinations* should include a full descriptive report of roentgenograms specifically obtained to determine bone age and must cite the standardization method used. Where roentgenograms must be obtained currently as a basis for adjudication under 100.03, views of the left hand and wrist should be ordered. In addition, roentgenograms of the knee and ankle should be obtained when cessation of growth is being evaluated in an older child at, or past, puberty.

C. The criteria in this section are applicable until closure of the major epiphyses. The cessation of significant increase in height at that point would prevent the application of these criteria.

100.01 Category of impairments, growth

100.02 *Growth impairment*, considered to be related to an additional specific medically determinable impairment, and one of the following:

A. Fall of greater than 15 percentiles in height which is sustained; or

B. Fall to, or persistence of, height below the third percentile.

100.03 *Growth impairment*, not identified as being related to an additional, specific medically determinable impairment. With:

A. Fall of greater than 25 percentiles in height which is sustained; and

B. Bone age greater than two standard deviations (2 SD) below the mean for chronological age (see 100.00B).

101.00 Musculoskeletal System.

A. *Rheumatoid arthritis.* Documentation of the diagnosis of juvenile rheumatoid arthritis should be made according to an established protocol, such as that published by the Arthritis Foundation, *Bulletin on the Rheumatic Diseases.* Vol. 23, 1972–1973 Series, p 712. Inflammatory signs include persistent pain, tenderness, erythema, swelling, and increased local temperature of a joint.

B. *The measurements of joint motion* are based on the technique for measurements described in the "Joint Method of Measuring and Recording," published by the American Academy of Orthopedic Surgeons in 1965, or "The Extremities and Back" in *Guides to the Evaluation of Permanent Impairment*, Chicago, American Medical Association, 1971, Chapter 1, pp. 1–48.

C. *Degenerative arthritis* may be the end stage of many skeletal diseases and conditions, such as traumatic arthritis, collagen disorders septic arthritis, congenital dislocation of the hip, aseptic necrosis of the hip, slipped capital femoral epiphyses, skeletal dysplasias, etc.

101.01 Category of impairments, musculoskeletal

101.02 *Juvenile rheumatoid arthritis.* With:

A. Persistence or recurrence of joint inflammation despite three months of medical treatment and one of the following:

1. Limitation of motion of two major joints of 50 percent or greater; or

2. Fixed deformity of two major weight-bearing joints of 30 degrees or more; or

3. Radiographic changes of joint narrowing, erosion, or subluxation; or

4. Persistent or recurrent systemic involvement such as iridocyclitis or pericarditis; or

B. Steroid dependence.

101.03 *Deficit of musculoskeletal function* due to deformity or musculoskeletal disease and one of the following:

A. Walking is markedly reduced in speed or distance despite orthotic or prosthetic devices; or

B. Ambulation is possible only with obligatory bilateral upper limb assistance (e.g., with walker, crutches); or

C. Inability to perform age-related personal self-care activities involving feeding, dressing, and personal hygiene.

101.05 *Disorders of the spine.*

A. Fracture of vertebra with cord involvement (substantiated by appropriate sensory and motor loss); or

B. Scoliosis (congenital idiopathic or neuromyopathic). With:

1. Major spinal curve measuring 60 degrees or greater; or

2. Spinal fusion of six or more levels. Consider under a disability for one year from the time of surgery; thereafter evaluate the residual impairment; or

3. FEV (vital capacity) of 50 percent or less of predicted normal values for the individual's measured (actual) height; or

C. Kyphosis or lordosis measuring 90 degrees or greater.

101.08 *Chronic osteomyelitis* with persistence or recurrence of inflammatory signs or drainage for at least 6 months despite prescribed therapy and consistent radiographic findings.

102.00 Special Senses and Speech

A. *Visual impairments in children.* Impairment of central visual acuity should be determined with use of the standard Snellen test chart. Where this cannot be used, as in very young children, a complete description should be provided of the findings using other appropriate methods of examination, including a description of the techniques used for determining the central visual acuity for distance.

The accommodative reflex is generally not present in children under 6 months of age. In premature infants, it may not be present until 6 months plus the number of months the child is premature. Therefore absence of accommodative reflex will be considered as indicating a visual impairment only in children above this age (6 months).

Documentation of a visual disorder must include description of the ocular pathology.

B. *Hearing impairments in children.* The criteria for hearing impairments in children take into account that a lesser impairment in hearing which occurs at an early age may result in a severe speech and language disorder.

Improvement by a hearing aid, as predicted by the testing procedure, must be demonstrated to be feasible in that child, since younger children may be unable to use a hearing aid effectively.

The type of audiometric testing performed must be described and a copy of the results must be included. The pure tone air conduction hearing levels in 102.08 are based on American National Standard Institute Specifications for Audiometers, S3.6–1969 (ANSI–1969). The report should indicate the specifications used to calibrate the audiometer.

The finding of a severe impairment will be based on the average hearing levels at 500, 1000, 2000, and 3000 Hertz (Hz) in the better ear, and on speech discrimination, as specified in § 102.08.

102.01 Category of Impairments, Special Sense Organs

102.02 *Impairments of central visual acuity.*

A. Remaining vision in the better eye after best correction is 20/200 or less; or

B. For children below 3 years of age at time of adjudication:

1. Absence of accommodative reflex (see 102.00A for exclusion of children under 6 months of age); or

2. Retrolental fibroplasia with macular scarring or neovascularization; or

3. Bilateral congenital cataracts with visualization of retinal red reflex only or when associated with other ocular pathology.

102.08 *Hearing impairments.*

A. For children below 5 years of age at time of adjudication, inability to hear air conduction thresholds at an average of 40 decibels (db) hearing level or greater in the better ear; or

B. For children 5 years of age and above at time of adjudication:

1. Inability to hear air conduction thresholds at an average of 70 decibels (db) or greater in the better ear; or

2. Speech discrimination scores at 40 percent or less in the better ear; or

3. Inability to hear air conduction thresholds at an average of 40 decibels (db) or greater in the better ear, and a speech and language disorder which significantly affects the clarity and content of the speech and is attributable to the hearing impairment.

103.00 Respiratory System

A. *Documentation of pulmonary insufficiency.* The reports of spirometric studies for evaluation under Table I must be expressed in liters (BTPS). The reported FEV_1 should represent the largest of at least three satisfactory attempts. The appropriately labeled spirometric tracing of three FEV maneuvers must be submitted with the report, showing distance per second on the abscissa and distance per liter on the ordinate. The unit distance for volume on the

tracing should be at least 15 mm. per liter and the paper speed at least 20 mm. per second. The height of the individual without shoes must be recorded.

The ventilatory function studies should not be performed during or soon after an acute episode or exacerbation of a respiratory illness. In the presence of acute bronchospasm, or where the FEV_1 is less than that stated in Table I, the studies should be repeated after the administration of a nebulized bronchodilator. If a bronchodilator was not used in such instances, the reason should be stated in the report.

A statement should be made as to the child's ability to understand directions and to cooperate in performance of the test, and should include an evaluation of the child's effort. When tests cannot be performed or completed, the reason (such as a child's young age) should be stated in the report.

B. *Cystic fibrosis.* This section discusses only the pulmonary manifestations of cystic fibrosis. Other manifestations, complications, or associated disease must be evaluated under the appropriate section.

The diagnosis of cystic fibrosis will be based upon appropriate history, physical examination, and pertinent laboratory findings. Confirmation based upon elevated concentration of sodium or chloride in the sweat should be included, with indication of the technique used for collection and analysis.

103.01 Category of impairments, respiratory

103.03 *Bronchial asthma.* With evidence of progression of the disease despite therapy and documented by one of the following:

A. Recent, recurrent intense asthmatic attacks requiring parenteral medication; or

B. Persistent prolonged expiration with wheezing between acute attacks and radiographic findings of peribronchial disease.

103.13 *Pulmonary manifestations of cystic fibrosis.* With:

A. FEV_1 equal to or less than the values specified in Table I (see § 103.00A for requirements of ventilatory function testing); or

B. For children where ventilatory function testing cannot be performed:

1. History of dyspnea on mild exertion or chronic frequent productive cough; and

2. Persistent or recurrent abnormal breath sounds, bilateral rales or rhonchi; and

3. Radiographic findings of extensive disease with hyperaeration and bilateral peribronchial infiltration.

TABLE I

Height (in centimeters)	FEV_1 equal to or less than (L, BTPS)
110 or less	0.6
120	0.7
130	0.9
140	1.1
150	1.3
160	1.5
170 or more	1.6

104.00 Cardiovascular System

A. *General.* Evaluation should be based upon history, physical findings, and appropriate laboratory data. Reported abnormalities should be consistent with the pathologic diagnosis. The actual electrocardiographic tracing, or an adequate marked photocopy, must be included. Reports of other pertinent studies necessary to substantiate the diagnosis or describe the severity of the impairment must also be included:

B. *Evaluation of cardiovascular impairment in children* requires two steps:

1. The delineation of a specific cardiovascular disturbance, either congenital or or acquired. This may include arterial or venous disease, rhythm disturbance, or disease involving the valves, septa, myocardium or pericardium; and

2. Documentation of the severity of the impairment, with medically determinable and consistent cardiovascular signs, symptoms, and laboratory data. In cases where impairment characteristics are questionably secondary to the cardiovascular disturbance, additional documentation of the severity of the impairment (e.g., catheterization data, if performed) will be necessary.

C. *Chest roentgenogram* (6 ft. PA film) will be considered indicative of cardiomegaly if:

1. The cardiothoracic ratio is over 60 percent at age one year or less, or 55 percent at more than one year of age; or

2. The cardiac size is increased over 15 percent from any prior chest oentgenograms; or

3. Specific chamber or vessel enlargement is documented in accordance with established criteria.

D. *Tables I, II, and III* below are designed for case adjudication and not for diagnostic purposes. The adult criteria may be useful for older children and should be used when applicable.

E. *Rheumatic fever,* as used in this section assumes diagnosis made according to the revised Jones Criteria.

104.01 Category of impairments, cardiovascular

104.02 *Chronic congestive failure.* With two or more of the following signs:

A. Tachycardia (see Table I).

B. Tachycardia (see Table II).

C. Cardiomegaly on chest roentgenogram (see 104.00C).

D. Hepatomegaly (more than 2 cm. below the right costal margin in the right midclavicular line).

E. Evidence of pulmonary edema, such as rales or orthopnea.

F. Dependent edema.

G. Exercise intolerance manifested as labored respiration on mild exertion (e.g., in an infant, feeding).

TABLE I.—TACHYCARDIA AT REST

Age	Apical Heart (beats per minute)
Under 1 yr	150
1 through 3 yrs	130
4 through 9 yrs	120
10 through 15 yrs	110
Over 15 yr	100

TABLE II.—TACHYPNEA AT REST

Age	Respiratory rate over (per minute)
Under 1 yr	40
1 through 5 yrs	35
6 through 9 yrs	30
Over 9 yrs	25

104.03 *Hypertensive cardiovascular disease.* With persistently elevated blood pressure for age (see Table III) and one of the following:

A. Impaired renal function as described under the criteria in 106.02; or

B. Cerebrovascular damage as described under the criteria in 111.06; or

C. Congestive heart failure as described under the criteria in 104.02.

TABLE III.—ELEVATED BLOOD PRESSURE

Age	S (over) mm.	Diastolic (over) in mm.
Under 6 mo.	95	60
6 mo. to 1 yr	110	70
1 through 8 yrs	115	80
9 through 11 yrs	120	80
12 through 15 yrs	130	80
Over 15 yrs	140	80

104.04 *Cyanotic congenital heart disease.* With one of the following:

A. Surgery is limited to palliative measures; or

B. Characteristic squatting, hemoptysis, syncope, or hypercyanotic spells; or

C. Chronic hematocrit of 55 percent or greater or arterial O_2 saturation of less than 90 percent at rest, or arterial oxygen tension of less than 60 Torr at rest.

104.05 *Cardiac arrhythmia, such as persistent or recurrent heart block or A-V dissociation (with or without therapy).* And one of the following:

A. Cardiac syncope; or

B. Congestive heart failure as described under the criteria in 104.02; or

C. Exercise intolerance with labored respirations on mild exertion (e.g., in infants, feeding).

104.07 *Cardiac syncope* with at least one documented syncopal episode characteristic of specific cardiac disease (e.g., aortic stenosis).

104.08 *Recurrent hemoptysis.* Associated with either pulmonary hypertension or extensive bronchial collaterals due to documented chronic cardiovascular disease.

104.09 *Chronic rheumatic fever or rheumatic heart disease.* With:

A. Persistence of rheumatic fever activity for 6 months or more, with significant murmur(s), cardiomegaly (see 104.00C), and other abnormal laboratory findings (such as

elevated sedimentation rate or electrocardiographic findings); or

B. Congestive heart failure as described under the criteria in 104.02.

105.00 Digestive System

A. *Disorders of the digestive system* which result in disability usually do so because of interference with nutrition and growth, multiple recurrent inflammatory lesions, or other complications of the disease. Such lesions or complications usually respond to treatment. To constitute a listed impairment, these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. *Documentation of gastrointestinal impairments* should include pertinent operative findings, radiographic studies, endoscopy, and biopsy reports. Where a liver biopsy has been performed in chronic liver disease, documentation should include the report of the biopsy.

C. *Growth retardation and malnutrition.* When the primary disorder of the digestive tract has been documented, evaluate resultant malnutrition under the criteria described in 105.08. Evaluate resultant growth impairment under the criteria described in 100.03. Intestinal disorders, including surgical diversions and potentially correctable congenital lesions, do not represent a severe impairment if the individual is able to maintain adequate nutrition growth and development.

D. *Multiple congenital anomalies.* See related criteria, and consider as a combination of impairments.

105.01 Category of impairments, digestive

105.03 *Esophageal obstruction, caused by atresia, stricture, or stenosis* with malnutrition as described under the criteria in 105.08.

105.05 *Chronic liver disease.* With one of the following:

A. Inoperable billiary atresia demonstrated by X-ray or surgery; or

B. Intractable ascites not attributable to other causes, with serum albumin of 3.0 gm./100 ml. or less; or

C. Esophageal varices (demonstrated by angiography, barium swallow, or endoscopy or by prior performance of a specific shunt or plication procedure); or

D. Hepatic coma, documentated by findings from hospital records; or

E. Hepatic encephalopathy. Evaluate under the criteria in 112.02; or

F. Chronic active inflammation or necrosis documented by SGOT persistently more than 100 units or serum bilirubin of 2.5 mg. percent or greater.

105.07 *Chronic inflammatory bowel disease (such as ulcerative colitis, regional enteritis), as documented in 105.00.* With one of the following:

A. Intestinal manifestations or complications, such as obstruction, abscess, or fistula formation which has lasted or is expected to last 12 months; or

B. Malnutrition as described under the criteria in 105.08; or

C. Growth impairment as described under the criteria in 100.03.

105.08 *Malnutrition, due to demonstrable gastrointestinal disease causing either a fall of 15 percentiles of weight which persists or the persistence of weight which is less than the third percentile (on standard growth charts).* And one of the following:

A. Stool fat excretion per 24 hours:

1. More than 15 percent in infants less than 6 months.

2. More than 10 percent in infants 6–18 months.

3. More than 6 percent in children more than 18 months; or

B. Persistent hematocrit of 30 percent or less despite prescribed therapy; or

C. Serum carotene of 40 mcg./100 ml. or less; or

D. Serum albumin of 3.0 gm./100 ml. or less.

106.00 Genito-Urinary System

A. *Determination of the presence of chronic renal disease* will be based upon the following factors:

1. History, physical examination, and laboratory evidence of renal disease.

2. Indications of its progressive nature or laboratory evidence of deterioration of renal function.

B. *Renal transplant.* The amount of function restored and the time required to effect improvement depend upon various factors including adequacy of post transplant renal function, incidence of renal infection, occurrence of rejection crisis, presence of systemic complications (anemia, neuropathy, etc.) and side effects of corticosteroid or immuno-suppressive agents. A period of at least 12 months is required for the individual to reach a point of stable medical improvement.

C. Evaluate associated disorders and complications according to the appropriate body system listing.

106.01 Category of impairments, genito-urinary

106.02 *Chronic renal disease.* With:

A. Persistent elevation of serum creatinine to 3 mg. per deciliter (100 ml.) or greater over at least 3 months; or

B. Reduction of creatinine clearance to 30 ml. per minute (43 liters/24 hours) per 1.73 m^2 of body surface area over at least 3 months; or

C. Chronic renal dialysis program for irreversible renal failure; or

D. Renal transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 106.00B).

106.06 Nephrotic syndrome, with edema not controlled by prescribed therapy. And:

A. Serum albumin less than 2 gm./100 ml.; or

B. Proteinuria more than 2.5 gm./1.73m^2/day.

107.00 Hemic and Lymphatic System

A. *Sickle cell disease* refers to a chronic hemolytic anemia associated with sickle cell hemoglobin, either hemozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).

Appropriate hematologic evidence for sickle cell disease, such as hemoglobin electrophoresis must be included. Vaso-occlusive, hemolytic, or aplastic episodes should be documented by description of severity, frequency, and duration.

Disability due to sickle cell disease may be solely the result of a severe, persistent anemia or may be due to the combination of chronic progressive or episodic manifestations in the presence of a less severe anemia.

Major visceral episodes causing disability include meningitis, osteomyelitis, pulmonary infections or infarctions, cerebrovascular accidents, congestive heart failure, genitourinary involvement, etc.

B. *Coagulation defects.* Chronic inherited coagulation disorders must be documented by appropriate laboratory evidence such as abnormal thromboplastin generation, coagulation time, or factor assay.

C. *Acute leukemia.* Initial diagnosis of acute leukemia must be based upon definitive bone marrow pathologic evidence. Recurrent disease may be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination. The pathology report must be included.

The designated duration of disability implicit in the finding of a listed impairment is contained in 107.11. Following the designated time period, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of any remaining impairment must be evaluated on the basis of the medical evidence.

107.01 Category of impairments, hemic and lymphatic

107.03 *Hemolytic anemia (due to any cause).* Manifested by persistence of hematocrit of 26 percent or less despite prescribed therapy, and reticulocyte count of 4 percent or greater.

107.05 *Sickle cell disease.* With:

A. Recent, recurrent, severe vaso-occlusive crises (musculoskeletal, vertebral, abdominal); or

B. A major visceral complication in the 12 months prior to application; or

C. A hyperhemolytic or aplastic crisis within 12 months prior to application; or

D. Chronic, severe anemia with persistence of hematocrit of 26 percent or less; or

E. Congestive heart failure, cerebrovascular damage, or emotional disorder as described under the criteria in 104.02, 111.00ff, or 112.00ff.

107.06 *Chronic idiopathic thrombocytopenic purpura of childhood* with purpura and thrombocytopenia of 40,000 platelets/cu. mm. or less despite prescribed therapy of recurrent upon withdrawal of treatment.

107.08 *Inherited coagulation disorder.* With:

A. Repeated spontaneous or inappropriate bleeding; or

B. Hemarthrosis with joint deformity.

107.11 *Acute leukemia.* Consider under a disability:

A. For 2½ years from the time of initial diagnosis; or

B. For 2½ years from the time of recurrence of active disease.

109.00 Endocrine System

A. *Cause of disability.* Disability is caused by a disturbance in the regulation of the secretion or metabolism of one or more hormones which are not adequately controlled by therapy. Such disturbances or abnormalities usually respond to treatment. To constitute a listed impairment these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. *Growth.* Normal growth is usually a sensitive indicator of health as well as of adequate therapy in children. Impairment of growth may be disabling in itself or may be an indicator of a severe disorder involving the endocrine system or other body systems. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.

C. *Documentation.* Description of characteristic history, physical findings, and diagnostic laboratory data must be included. Results of laboratory tests will be considered abnormal if outside the normal range or greater than two standard deviations from the mean of the testing laboratory. Reports in the file should contain the information provided by the testing laboratory as to their normal values for that test.

D. *Hyperfunction of the adrenal cortex.* Evidence of growth retardation must be documented as described in 100.00. Elevated blood or urinary free cortisol levels are not acceptable in lieu of urinary 17-hydroxycorticosteroid excretion for the diagnosis of adrenal cortical hyperfunction.

E. *Adrenal cortical insufficiency.* Documentation must include persistent low plasma cortisol or low urinary 17-hydroxycorticosteroids or 17-ketogenic steroids and evidence of unresponsiveness to ACTH stimulation.

109.01 Category of impairments, endocrine

109.02 *Thyroid Disorders.*

A. Hyperthyroidism (as documented in 109.00C). With clinical manifestations despite prescribed therapy, and one of the following:

1. Elevated serum thyroxine (T_4) and either elevated free T_4 or resin T_3 uptake; or

2. Elevated thyroid uptake of radioiodine; or

3. Elevated serum triiodothyronine (T_3).

B. *Hypothyroidism.* With one of the following, despite prescribed therapy:

1. IQ of 69 or less; or

2. Growth impairment as described under the criteria in 100.02 A and B; or

3. Precocious puberty.

109.03 *Hyperparathyroidism (as documented in 109.00C).* With:

A. Repeated elevated total or ionized serum; or

B. Elevated serum parathyroid hormone.

109.04 *Hypoparathyroidism or Pseudohypoparathyroidism.* With:

A. Severe recurrent tetany or convulsions which are unresponsive to prescribed therapy; or

B. Growth retardation as described under criteria in 100.02 A and B.

109.05 *Diabetes insipidus, documented by pathologic hyertonic saline or water deprivation test.* And one of the following:

A. Intracranial space-occupying lesion, before or after surgery; or

B. Unresponsiveness to Pitressin; or

C. Growth retardation as described under the criteria in 100.02 A and B; or

D. Unresponsive hypothalmic thirst center, with chronic or recurrent hypernatremia; or

E. Decreased visual fields attributable to a pituitary lesion.

109.06 *Hyperfunction of the adrenal cortex (Primary or secondary).* With:

A. Elevated urinary 17-hyroxycorticosteroids (or 17-ketogenic steroids) as documented in 109.00 C and D; and

B. Unresponsiveness to low-dose dexamethasone suppression.

109.07 *Adrenal cortical insufficiency (as documented in 109.00 C and E)* with recent, recurrent episodes of circulatory collapse.

109.08 *Juvenile diabetes mellitus (as documented in 109.00C) requiring parenteral insulin.* And one of the following, despite prescribed therapy:

A. Recent, recurrent hospitalizations with acidosis; or

B. Recent, recurrent episodes of hypoglycemia; or

C. Growth retardation as described under the criteria in 100.02 A or B; or

D. Impaired renal function as described under the criteria in 106.00ff.

109.09 *Iatrogenic hypercorticoid state.* With chronic glucocorticoid therapy resulting in one of the following:

A. Osteoporosis; or

B. Growth retardation as described under the criteria in 100.02 A or B; or

C. Diabetes mellitus as described under the criteria in 109.08; or

D. Myopathy as described under the criteria in 111.06; or

E. Emotional disorder as described under the criteria in 112.00ff.

109.10 *Pituitary dwarfism (with documented growth hormone deficiency).* And growth impairment as described under the criteria in 100.02B.

109.11 *Adrenogenital syndrome.* With:

A. Recent, recurrent self-losing episodes despite prescribed therapy; or

B. Inadequate replacement therapy manifested by accelerated bone age and virilization, or

C. Growth impairment as described under the criteria in 100.02 A or B.

109.12 *Hypoglycemia (as documented in 109.00C).* With recent, recurrent hypoglycemic episodes producing convulsion or coma.

109.13 *Gonadal Dysgenesis (Turner's Syndrome), chromosomally proven.* Evaluate the resulting impairment under the criteria for the appropriate body system.

110.00 Multiple Body Systems

A. *Catastrophic congenital abnormalities or disease.* This section refers only to very serious congenital disorders, diagnosed in the newborn or infant child.

B. *Immune deficiency diseases.* Documentation of immune deficiency disease must be submitted, and may include quantitative immunoglobulins, skin tests for delayed hypersensitivity, lymphocyte stimulative tests, and measurements of cellular immunity mediators.

110.01 Category of impairments, multiple body systems

110.08 *Catastrophic congenital abnormalities or disease.* With:

A. A positive diagnosis (such as anencephaly, trisomy D or E, cyclopia, etc.), generally regarded as being incompatible with extrauterine life; or

B. A positive diagnosis (such as cri du chat, Tay-Sachs Disease) wherein attainment of the growth and development level of 2 years is not expected to occur.

110.09 *Immune deficiency disease.*

A. *Hypogammaglobulinemia or dysgammaglobulinemia.* With:

1. Recent, recurrent severe infections; or

2. A complication such as growth retardation, chronic lung disease, collagen disorder, or tumors.

E. *Thymic dysplastic syndromes* (such as Swiss, diGeorge).

111.00 Neurological

A. *Seizure disorder* must be substantiated by at least one detailed description of a typical seizure. Report of recent documentation should include an electroencephalogram and neurological examination. Sleep EEG is preferable, especially with temporal lobe seizures. Frequency of attacks and any associated phenomena should also be substantiated.

Young children may have convulsions in association with febrile illnesses. Proper use of 111.02 and 111.03 requires that a seizure disorder be established. Although this does not exclude consideration of seizures occurring during febrile illnesses, it does require documentation of seizures during nonfebrile periods.

There is an expected delay in control of seizures when treatment is started, particularly when changes in the treatment regimen are necessary. Therefore, a seizure disorder should not be considered to meet the requirements of 111.02 of 111.03 unless it is shown that seizures have persisted more then three months after prescribed therapy began.

B. *Minor motor seizures.* Classical petit mal seizures must be documented by characteristic EEG pattern, plus information as to age at onset and frequency of clinical seizures. Myoclonic seizures, whether of the typical infantile or Lennox-gastaut variety after infancy, must also be documented by the characteristic EEG pattern plus information as to age at onset and frequency of seizures.

C. *Motor dysfunction.* As described in 111.06, motor dysfunction may be due to any neurological disorder. It may be due to static or progressive conditions involving any area of the nervous system and producing any type of neurological impairment. This may include weakness, spasticity, lack of coordination, ataxia, tremor, athetosis, or sensory loss. Documentation of motor dysfunction must include neurologic findings and description of type of neurologic abnormality (e.g., spasticity, weakness), as well as a description of the child's functional impairment (i.e., what the child is unable to do because of the abnormality). Where a diagnosis has been made, evidence should be included for substantiation of the diagnosis

(e.g., blood chemistries and muscle biopsy reports), wherever applicable.

D. *Impairment of communication.* The documentation should include a description of a recent comprehensive evaluation, including all areas of affective and effective communication, performed by a qualified professional.

111.01 Category of impairment, neurological

111.02 *Major motor seizure disorder.*

A. *Major motor seizures.* In a child with an established seizure disorder, the occurrence of more than one major motor seizure per month despite at least three months of prescribed treatment. With:

1. Daytime episodes (loss of consciousness and convulsive seizures); or

2. Nocturnal episodes manifesting residuals which interfere with activity during the day.

B. *Major motor seizures.* In a child with an established seizure disorder, the occurrence of a least one major motor seizure in the year prior to application despite at least three months of prescribed treatment. And one of the following:

1. IQ of 69 or less; or

2. Significant interference with communication due to speech, hearing, or visual defect; or

3. Significant emotional disorder; or

4. Where significant adverse effects of medication interfere with major daily activities.

111.03 *Minor motor seizure disorder.* In a child with an established seizure disorder, the occurrence of more than one minor motor seizure per week, with alteration of awareness or loss of consciousness, despite at least three months of prescribed treatment.

111.05 *Brain tumors. A. Malignant* gliomas (astrocytoma—Grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, primary sarcoma or brain stem gliomas; or

B. Evaluate other brain tumors under the criteria for the resulting neurological impairment.

111.06 *Motor dysfunction (due to any neurological disorder).* Persistent disorganization or deficit of motor function for age involving two extremities, which (despite prescribed therapy) interferes with age-appropriate major daily activities and results in disruption of:

A. Fine and gross movements; or

B. Gait and station.

111.07 *Cerebral palsy.* With: A. Motor dysfunction meeting the requirements of 111.06 or 111.03; or

B. Less severe motor dysfunction (but more than slight) and one of the following:

1. IQ of 69 or less; or

2. Seizure disorder, with at least one major motor seizure in the year prior to application; or

3. Significant interference with communication due to speech, hearing or visual defect; or

4. Significant emotional disorder.

111.08 *Meningomyelocele (and related disorders).* With one of the following despite prescribed treatment:

A. Motor dysfunction meeting the requirements of § 111.03 or § 111.06; or

B. Less severe motor dysfunction (but more than slight), and:

1. Urinary or fecal incontinence when inappropriate for age; or

2. IQ of 69 or less; or

C. Four extremity involvement; or

D. Noncompensated hydrocephalus producing interference with mental or motor developmental progression.

111.09 *Communication impairment, associated with documented neurological disorder.* And one of the following:

A. Documented speech deficit which significantly affects the clarity and content of the speech; or

B. Documented comprehension deficit resulting in ineffective verbal communication for age; or

C. Impairment of hearing as described under the criteria in 102.08.

112.00 Mental and Emotional Disorders

A. *Introduction.* This section is intended primarily to describe mental and emotional disorders of young children. The criteria describing medically determinable impairments in adults should be used where they clearly appear to be more appropriate.

B. *Mental retardation. General.* As with any other impairment, the necessary evidence consists of symptoms, signs, and laboratory findings which provide medically demonstrable evidence of impairment severity. Standardized intelligence test results are essential to the adjudication of all cases of mental retardation that are not clearly covered under the provisions of 112.05A. Developmental milestone criteria may be the sole basis for adjudication only in cases where the child's young age and/or condition preclude formal standardized testing by a psychologist or psychiatrist experienced in testing children.

Measures of intellectual functioning. Standardized intelligence tests, such as the Wechsler Preschool and Primary Scale of Intelligence (WPPSI), the Wechsler Intelligence Scale for Children—Revised (WISC–R), the Revised Stanford-Binet Scale, and the McCarthey Scales of Children's Abilities, should be used wherever possible. Key data such as subtest scores should also be included in the report. Tests should be administered by a qualified and experienced psychologist or psychiatrist, and any discrepancies between formal tests results and the child's customary behavior and daily activities should be duly noted and resolved.

Developmental milestone criteria. In the event that a child's young age and/or condition preclude formal testing by a psychologist or psychiatrist experienced in testing children, a comprehensive evaluation covering the full range of developmental activities should be performed. This should consist of a detailed account of the child's daily activities together with direct observations by a professional person; the latter should include indices or manifestations of social, intellectual, adaptive, verbal, motor (posture, locomotion, manipulation), language, emotional, and self-care development for age. The above should then be related by the evaluating or treating physician to established developmental norms of the kind found in any widely used standard pediatrics test.

c. *Profound combined mental-neurological-musculoskeletal impairments.* There are children with profound and irreversible brain damage resulting in total incapacitation. Such children may meet criteria in either neurological, musculoskeletal, and/or mental sections; they should be adjudicated under the criteria most completey substantiated by the medical evidence submitted. Frequently, the most appropriate criteria will be found under the mental impairment section.

112.01 Category of impairments, mental and emotional

112.02 *Chronic brain syndrome.* With arrest of developmental progression for at least six months or loss of previously acquired abilities.

112.03 *Psychosis of infancy and childhood.* Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; constriction of age-appropriate interests; deficiency of age-approrpiate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:

A. Significant withdrawal or detachment; or

B. Impaired sense of reality; or

C. Bizarre behavior patterns; or

D. Strong need for maintenance of sameness, with intense anxiety, fear, or anger when change is introduced; or

E. Panic at threat of separation from parent.

112.04 *Functional nonpsychotic disorders.* Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; constriction of age-appropriate interests; deficiency of age-appropriate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:

A. Psychophysiological disorder (e.g., diarrhea, asthma); or

B. Anxiety; or

C. Depression; or

D. Phobic, obsessive, or compulsive behavior; or

E. Hypochondriasis; or

F. Hysteria; or

G. Asocial or antisocial behavior.

112.05 *Mental retardation.*—A. Achievement of only those developmental milestones generally acquired by children no more than one-half the child's chronological age; or

B. IQ of 59 or less; or

C. IQ of 60–69, inclusive, and a physical or other mental impairment imposing additional and significant restriction of function or developmental progression.

113.00 Neoplastic Disease, Malignant

A. *Introduction.* Determination of disability in the growing and developing child with a malignant neoplastic disease is based upon the combined effects of:

1. The pathophysiology, histology, and natural history of the tumor; and

2. The effects of the currently employed aggressive multimodal therapeutic regimens.

Combinations of surgery, radiation, and chemotherapy or prolonged therapeutic schedules impart significant additional morbidity to the child during the period of greatest risk from the tumor itself. This period of highest risk and greatest therapeutically-induced morbidity defines the limits of disability for most of childhood neoplastic disease.

B. *Documentation.* The diagnosis of neoplasm should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen, along with all pertinent laboratory and X-ray reports. The evidence should also include a recent report directed especially at describing whether there is evidence of local or regional recurrence, soft part or skeletal metastases, and significant post therapeutic residuals.

C. *Malignant solid tumors,* as listed under 113.03, include the histiocytosis syndromes except for solitary eosinophilic granuloma. Thus, 113.03 should not be used for evaluating brain tumors (see 111.05) or thyroid tumors, which must be evaluated on the basis of whether they are controlled by prescribed therapy.

D. *Duration of disability* from malignant neoplastic tumors is included in 113.02 and 113.03. Following the time periods designated in these sections, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of a remaining impairment must be evaluated on the basis of the medical evidence.

113.01 Category of Impairments, Neoplastic Diseases—Malignant

113.02 *Lymphoreticular malignant neoplasms.*

A. Hodgkin's disease with progressive disease not controlled by prescribed therapy; or

B. Non-Hodgkin's lymphoma. Consider under a disability:

1. For 2½ years from time of initial diagnosis; or

2. For 2½ years from time of recurrence of active disease.

113.03 *Malignant solid tumors.* Consider under a diability:

A. For 2 years from the time of initial diagnosis; or

B. For 2 years from the time of recurrence of active disease.

113.04 *Neuroblastoma.* With one of the following:

A. Extension across the midline; or

B. Distant metastases; or

C. Recurrence; or

D. Onset at age 1 year or older.

113.05 *Retinoblastoma.* With one of the following:

A. Bilateral involvement; or

B. Metastases; or

C. Extension beyond the orbit; or

D. Recurrence.

[FR Doc. 85-28672 Filed 12-5-85; 8:45 am]

BILLING CODE 4190-11-M

federal register

Friday
December 6, 1985

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; New Publication Procedures; Notices

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:	
AR85–4045	Oct. 18, 1985.
Connecticut:	
CT85–3023	June 7, 1985.
Florida:	
FL83–1058	Aug. 19, 1983.
Illinois:	
IL85–5042	Oct. 18, 1985.
Iowa:	
IA84–4042	June 15, 1984.
Massachusetts:	
MA85–3013	Mar. 15, 1985.
New York:	
NY85–3026	May 10, 1985.
Oklahoma:	
OK85–4052	Nov. 29, 1985.
OK85–4051	Do.
Pennsylvania:	
PA82–3011	Mar. 12, 1982.
PA84–3035	Sept. 21, 1984.
Rhode Island:	
RI84–3043	Nov. 30, 1984.
Texas:	
TX85–4050	Nov. 8, 1985.
TX83–4061	Aug. 26, 1983.
Utah:	
UT83–5120	Sept. 30, 1983
Washington:	
WA85–5039	Oct. 11, 1985.
WA85–5038	Oct. 4, 1985.

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.

New York:	
NY83–3032 (NY85–3056)	July 29, 1983.

Signed at Washington, DC, this 15th day of November 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. AR85-4045 - MOD # 2 (50FR42334 - October 18, 1985)
Clark, Garland & Hot Springs Cos. Arkansas

CHANGE:

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS-STONEMASONS Hot Springs County	12.85	.75

DECISION NO. AZ 83-5105 MOD NO. 10
(48 FR 9426-March 4, 1983)
Pima County, Arizona

CHANGE:
Modification Number 8 published November 22, 1985 to read modification Number 9

DECISION NO. CT85-3023 - MOD. #5
(50 FR 24109 - June 7, 1985)
Statwide Connecticut

CHANGE:

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Area 3		
Brush, roller, taper	17.60	2.50
Vinyl & Wall coverings	19.00	2.50
Steel	19.40	2.50
Epoxy	20.50	2.50
Spray	26.40	2.50
Residential	15.35	2.50
Area 4 & 5:		
Painters, brush, roller, and tapers	17.00	3.45
Paperhangers	17.50	3.45
Riggers	18.10	3.45
Tanks, Towers, Swing stage, boatswain chair, riding steel and hazardous work of a similar nature	19.10	3.45
Sandblasters & Sprayman	21.10	3.45

DECISION NO. FL83-1058- MOD. #3
(48 FR 37799-August 19, 1983)
DUVAL COUNTY, FLORIDA

CHANGE:

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN	$13.77	2.13
ELECTRICIANS:		
WIREMAN	14.30	3%+ 3.33
CABLE SPLICER	14.65	3%+ 3.33

DECISION NO. IL85-3042 - Mod 41
(50 FR 42336 - Oct. 18, 1985)
Bureau, Carroll, Henry, JoDaviess Lee, Ogle, Rock Island, Stephenson, Whiteside, and Winnebago Counties, Illinois

CHANGE:

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Area 6:		
Unskilled	$13.18	$2.70
Semi-skilled	13.43	2.70
Skilled	13.68	2.70

DECISION NO. IA84-4042 - MOD. #7
(49 FR 24855 - 6/15/84)
Woodbury County, Iowa

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Carpenters:		
All other construction:		
On projects $750,000 & under:		
Carpenters, drywall hangers & lathers	$10.80	2.02
Millwrights & pile-drivermen	11.30	2.02
On projects over $750,000:		
Carpenters, drywall hangers & lathers	12.30	2.02
Millwrights & pile-drivermen	12.80	2.02
Ironworkers	12.49	1.795
	(3)	

DECISION NO. OK85-4051 - MOD. NO. 1 (50 FR November 29, 1985)
Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Roger Mills Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods, & Woodward Counties Oklahoma.

CHANGE:

	Basic Hourly Rates	Fringe Benefits
CEMENT MASONS Area II	$13.70	$ .76
IRONWORKERS Area I	13.12	2.15
OMIT:		
POWER TOOL OPERATOR Area II	15.54	.76

DECISION NO. OK85-4052 - MOD. NO. 1 (50 FR November 29, 1985)

Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, rogers, Tulsa, Sequoyah, Wagoner, and Washington Cos., Oklahoma

CHANGE:

	Basic Hourly Rates	Fringe Benefits
CEMENT MASONS Area III	$13.70	.76
IRONWORKERS Area II	13.12	2.15
OMIT:		
POWER TOOL OPERATOR Area III	15.54	.76

DECISION NO. MA85-3813 MOD. NO. 3
(50 FR 10567 - March 15, 1985)
Essex, Suffolk, Middlesex, Norfolk, Bristol, Plymouth, Barnstable, Dukes, Nantucket Counties, Massachusetts

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
AREA 3	$17.95	3%+ 4.55

DECISION NO. NY85-3826 MOD. #1
(50 FR 19856 - May 10, 1985)
MONROE COUNTY, NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
CARPENTERS (Building)	14.91	4.92
CARPENTERS & PILEDRIVERMEN (Heavy and Highway)	12.94	4.92+ b
	(4)	

MODIFICATIONS P. 3

DECISION NO. PA82-3011 - MOD. #14 (47 FR 10963 - March 12, 1982) Bradford, Tioga & Union Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
SPRINKLER FITTERS	17.75	3.40
ELECTRICIANS:		
Bradford County, Town of Towanda, that portion of the Susquehanna River South of Towanda and west of U.S. Highway 309, North of Towanda	15.55	3.40+ 3%
POWER EQUIPMENT OPERATORS:		
Group 1	16.52	26.6%+ .50+e
Group 2	16.23	"
Group 3	15.17	"
Group 4	14.52	"
Group 5	13.26	"
Group 6	12.36	"

DECISION NO. PA84-3035 - MOD. #8 (49 FR 27243 - Sept. 21, 1984) Lackawanna, Susquehanna, Wayne & Wyoming Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
POWER EQUIPMENT OPERATORS:		
Group 1	15.89	26.6%+ .50+f
Group 2	15.60	"
Group 3	14.72	"
Group 4	13.95	"
Group 5	13.47	"
Group 6	12.55	"
Group 7	16.14	"
Group 7-A	16.01	"
Group 7-B	16.64	"

DECISION NO. RI84-3043 - MOD. #15 (49 FR 47171 November 30, 1984) Statewide, Rhode Island	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BUILDING CONSTRUCTION		
TILE, TERRAZZO AND MARBLE MASONS	17.15	5.45
HEAVY & HIGHWAY CONSTRUCTION		
BRICKLAYERS, STONEMASONS, Catch Basins, Manhole Builders	14.83	5.32
WATER & SEWER LINE PROJECTS: HIGHWAY AND BRIDGE INCIDENTAL TO HIGHWAY CONSTRUCTION PROJECTS		
Class 1	17.47	3.125
Class 2	16.62	"
Class 3	16.00	"
Class 4	11.70	"
Class 5	15.95	"
Class 6	16.65	"
Class 7	16.07	"
Class 8	16.05	"
Class 9	13.22	"
Class 10	15.05	"
Class 11	14.85	"
Class 12	15.52	"
Class 13	15.45	"
Class 14	15.90	"
Class 15	12.52	"

(5)

MODIFICATIONS P. 4

DECISION NO. UT83-5120-MOD. #14 (48 FR 44992 - Sept. 30, 1983) Statewide, Utah	Basic Hourly Rates AREA 1	Basic Hourly Rates AREA 2
TRUCK DRIVERS:		
Dump Trucks - water level Capacity (bottom, end, and side)(including Dumpster Truck, Turnawagons, Turnarockers and Dumpcrete):		
Less than 8 cu. yds.	$15.37	$18.37
8 cu. yds. and less than 14 cu. yds.	15.52	18.52
14 cu. yds. and less than 35 cu. yds.	15.67	18.67
35 cu. yds. and less than 55 cu. yds.	15.87	18.87
55 cu. yds. and less than 75 cu. yds.	16.07	19.07
75 cu. yds. and less than 95 cu. yds.	16.27	18.27
95 cu. yds. and less than 105 cu. yds.	16.47	18.47
105 cu. yds. and less than 130 cu. yds.	16.59	19.59
All 130 cu. yds. and over to be paid ($0.005 per cu. yd. capacity per hour in addition to rate for 105 yds. and less than 130 yds.		
Flat Rack Trucks, Bulk Cement Trucks, Transport Trucks, Semi-trailer (carrying capacity):		
Pickup	15.195	18.195
Less than 10 tons	15.27	18.27
10 tons and less than 15 tons	15.42	18.42
15 tons and less than 20 tons	15.52	18.52
20 tons and over	15.67	18.67

	Basic Hourly Rates AREA 1	Basic Hourly Rates AREA 2
TRUCK DRIVERS: (Cont'd)		
Transit Mix Trucks:		
0 cu. yds. to 8 cu. yds.	$15.595	$18.595
Over 8 to 14 cu. yds.	15.695	18.695
Concrete Pumping Trucks	15.595	18.595
Water, Fuel and Oil Trucks: 0 to		
less than 1200 gallons	16.245	19.245
1200 gallons to less than 2500 gallons	15.37	18.37
2500 gallons to less than 4000 gallons	15.52	18.52
4000 gallons to less than 6000 gallons	15.82	18.82
6000 gallons to less than 10,000 gallons	16.07	19.07
10,000 gallons to less than 15,000 gallons	16.32	19.32
15,000 gallons to less than 20,000 gallons	16.57	19.57
20,000 gallons to less than 25,000 gallons	16.82	19.82
25,000 gallons and over	17.07	20.07
Oiler Spreader Operator where Boot Man is not required)	16.07	19.07
Fork Lift, Straddle Truck	15.57	18.57
FRINGE BENEFITS: $5.13		

(6)

DECISION #TX85-4050-MOD.#2
(50 FR 47337 - 11/8/85)

JEFFERSON & ORANGE COUNTIES, TEXAS

CHANGE:

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Group 1: Pick up trucks; trucks under 1½ ton	$10.77	$1.07
Group 2: Buses and fork-lifts	12.34	1.07
Group 3: Dump trucks less than 7 yards; 1½ tons thru 2½ tons	13.04	1.07
Group 4: Over 2½ tons; farm tractors; floats; trucks pulling trailers; euclids (not self loading)	13.29	1.07
SHEET METAL WORKERS:		
Commercial	15.20	3.11+3%
Work on a single family dwelling of multiple family housing units less than 3 stories in height where each individual family apt. is individually conditioned by a separate & independent unit or system	12.20	3.11+3%
POWER EQUIPMENT OPERATORS:		
GROUP 1	15.37	1.90
GROUP 2	12.90	1.90
GROUP 3	10.45	1.90
GROUP 4	10.22	1.90

DECISION #TX83-4061-MOD.#6
(48 FR 38966 - 8/26/83)

EL PASO COUNTY, TEXAS

CHANGE:

Sprinkler Fitters	$16.66	$3.40

DECISION NO. WA85-5039 - Mod#2
(50 FR 41631 - Oct. 11, 1985)

Statewide Washington

CHANGE:

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Area 4:		
D.O.E. Hanford Site in Benton & Franklin Cos.:		
Group 1	$14.28	$4.35
Group 2	14.58	4.35
Group 3	15.13	4.35
Group 4	15.28	4.35
Group 5	15.43	4.35
Group 6	15.68	4.35
Group 7	15.93	4.35
Group 8	16.93	4.35
Group 9	18.68	4.35
OREGON:		
Area 3:		
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum, and Pacific (S. 1/2) Counties:		
Group 1	17.83	5.15
Group 1A	18.57	5.15
Group 2	17.26	5.15
Group 3	16.83	5.15
Group 4	16.46	5.15

DECISION NO. WA85-5028 - Mod#3
(50 FR 40782 - October 4, 1985)

Adams, Asotin, *Benton, Columbia, *Douglas, Ferry, *Franklin, Garfield, Grant, Lincoln, *Okanogan, Pend-Oreille, Stevens, Walla Walla, and Whitman Cos., Washington

CHANGE:

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Area 1:		
D.O.E. Hanford Site in Benton & Franklin Cos.:		
Group 1	$14.28	$4.35
Group 2	14.58	4.35
Group 3	15.13	4.35
Group 4	15.28	4.35
Group 5	15.43	4.35
Group 6	15.68	4.35
Group 7	15.93	4.35
Group 8	16.93	4.35
Group 9	18.68	4.35

(7)

STATE: NEW YORK

COUNTIES: BRONX, KINGS, QUEENS, NEW YORK, AND RICHMOND

DECISION NO. NY85-3056

DATE: Date of Publication

Supersedes Decision No. NY83-3032 dated July 29, 1983 in 48 FR 34629.

DESCRIPTION OF WORK: Building, Residential (including family homes and apartments up to and including 4 stories), Heavy, (excluding water well drilling) & Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	18.64	9.84
BOILERMAKERS	22.75	3%+a
BRICKLAYERS	18.44	6.77
CARPENTERS:		
Building & Residential (except building foundations):		
Carpenters	19.66	7.57
New construction of one or two family homes, condominiums, apartments or townhouses of up to 2 stories	12.67	4.42
Drywall installers	19.66	7.57
Resilient Floor layers	17.66	7.68
Hand sewers	11.81	7.68
Millwrights	18.78	8.60
Building & Residential (building foundations):		
Carpenters	17.76	6.685
Piledrivermen & Dock-builders	19.66	7.72
Diver	20.87	6.765
Diver tenders	16.27	6.765
Timbermen	19.27	7.72
CEMENT MASONS	18.60	4.90
DRYWALL TAPERS	14.82	32%
ELECTRICIANS	22.50	23%+b
Jobbing, maintenance, repair work; alterations	11.50	23%+b
ELEVATOR CONSTRUCTORS:		
Elevator Constructors	14.99	2.33+ c+d
Helpers	11.24	2.33+ c+d
Probationary Helpers	7.50	
Modernization & repair:		
Elevator Constructors	12.72	2.33+ c+d
Helpers	9.54	2.33+ c+d
Probationary helpers	6.36	
GLAZIERS	17.65	5.70
Swing scaffold	20.30	7.10
IRONWORKERS:		
Ornamental finisher	16.23	8.45
Structural	15.50	11.59 +e
Riggers & Stone derrickmen	18.33	9.07
LABORERS:		
Unskilled	14.50	5.73
Asphalt laborers	12.40	2.85+f
Asphalt rakers	12.76	2.85+f
Asphalt tampers	12.42	2.85+f
Cement & Concrete workers	14.15	3.655
Mason Tenders	16.10	2.772
LABORERS (Heavy):		
Blasters	14.75	2.86
Concrete breakers, chippers, jackhammers, pneumatic tools, spades	13.93	2.86
Drill runner, air trac, wagon drills	13.30	2.86
Powder carriers	11.98	2.86
Magazine keepers	7.47	2.86
Nippers	11.41	2.86
LABORERS (Highway):		
Formsetters	13.65	2.85+g
Pavers & curb setters	14.68	2.85+g
Rammermen	14.21	2.85+g
Puddlers, concrete, rakers	12.16	2.85+g
LABORERS (Demolition):		
Barmen	11.90	18%
Barmen helpers	11.60	18%
METALLIC LATHERS & REINFORCING IRON WORKERS	21.89	4.60+h
MARBLE SETTERS:		
Cutters & setters	13.93	4.19+i
Carvers	14.48	4.19+i
Polishers	14.89	2.90+i
Crane Ops. & Derrickmen	12.91	4.34+i
Marble finishers (Helpers)	12.91	2.90+i
PAINTERS:		
Brush & roller	16.00	32%
Spray & scaffold	19.43	32%
Fire escapes	18.29	32%
Structural steel	16.30	20.5% +1.00

(8)

DECISION NO. NY85-3056	Basic Hourly Rates	Fringe Benefits
PLASTERERS:		
Kings	12.45	2.90
Queens	15.40	3.11
Richmond, Bronx, NY	13.75	4.50
PLUMBERS:		
NY, Bronx	20.41	9.27+j
Jobbing-repair and/or replacement of the present plumbing system that does not change the existing roughing	13.50	4.14+j
Kings, Queens	19.91	7.84
Richmond	22.25	5.51
Jobbing and alteration where the C.O. has been issued and the building has been occupied, & (except in one and two family houses), the repairs, alterations and replacements to the plumbing systems do not change the existing roughing	13.03	2.39
POINTERS, CAULKERS, & CLEANERS:		
Steamcleaners	19.52	4.07
Sandblasters	20.17	4.07
POWER EQUIPMENT OPERATORS:		
Building Construction		
Class 1	20.44	8.20+k
Class 2	20.05	8.20+k
Class 3	19.30	8.20+k
Class 4:		
a	20.80	8.20+k
b	21.05	8.20+k
c	21.30	8.20+k
d	21.80	8.20+k
Class 5:		
a	21.99	8.20+k
b	21.02	8.20+k
c	15.99	8.20+k
d	16.54	8.20+k
Class 6	21.05	8.20+k
Building Construction Maintenance		
Class 1	18.84	6.95
Class 2	16.27	6.95
Class 3	17.62	6.95
Class 4	15.19	6.95
Heavy & Highway Construction:		
Class 1	20.46	8.20+k
Class 2	20.31	8.20+k
Class 3	19.84	8.20+k
Class 4	19.44	8.20+k
Class 5	19.00	8.20+k
Class 6	18.99	8.20+k
Class 7	18.45	8.20+k
Class 8	16.76	8.20+k
Class 9	18.03	8.20+k
Class 10	14.44	8.20+k
Class 11	17.97	8.20+k
Class 12	17.14	8.20+k
Class 13	13.67	8.20+k
Class 14	16.93	8.20+k
Class 15	15.82	8.20+k
Class 16	13.67	8.20+k
Class 17	16.95	8.20+k
Class 18	13.58	8.20+k
Class 19	15.94	8.20+k
Heavy & Highway Construction Maintenance:		
Class 1	18.71	6.95
Class 2	15.21	6.95
Class 3	19.25	6.95
Class 4	18.71	6.95
Class 5	16.34	6.95
Class 6	18.34	6.95
Class 7	17.48	6.95
Class 8	14.15	6.95
ROOFERS:		
Composition, damp and waterproofer	17.00	8.19
SHEET METAL WORKERS	22.627	6.72
SPRINKLER FITTERS & STEAMFITTERS	20.10	7.42
Refrigeration, air conditioning and oil burner maintenance and installation machanics (Installation of commercial refrigeration equipment where the combined horsepower does not exceed 5 horsepower; and installation of air cooling, heating and air conditioning on any job where the combined compressor horsepower does not exceed 10 horsepower)	13.98	1.57+1

DECISION NO. NY85-3056	Basic Hourly Rates	Fringe Benefits
STONEMASONS	17.76	5.75
TERRAZZO WORKERS	15.48	3.12
TERRAZZO & MOSAIC FINISHERS	16.96	3.12
TILE SETTERS	19.405	4.43
TILE FINISHERS	17.56	3.17

WELDERS - Rate for craft to which the 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)).

FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

a. Paid Holidays: Good Friday, Friday after Thanksgiving, Christmas Eve Day and New Year's Eve Day.

b. Employer contributions for additional security benefits: $4.00 per day plus an amount equal to the employee's payroll deduction for FICA for employees other than jobbing maintenance and repair; $5.00 per day for jobbing, maintenance and repair.

c. Employer contributes $8.00 per day to an Annuity Fund.

d. Paid Holidays: A through F, Lincoln's Birthday, Washington's Birthday, Columbus Day, Election Day and Armistice Day.

Vacation Pay: Employees with 6 months of service in the industry - 2 weeks; employees with 5 years of service in the industry - 3 weeks.

e. Paid Holidays: A and F, provided the employee works a full half-day.

f. Paid Holidays: B, C, D, E, Columbus Day, Election Day and Veterans' Day, provided the employee works at least one day in the week in which the holiday occurs.

g. Paid Holidays: B, C, D, E, Columbus Day and Election Day, provided the employee works at least one day in the week in which the holiday occurs.

h. Paid Holidays: One-half day's pay on Christmas Eve and New Year's Eve.

i. Paid Holidays: One-half day's pay for Labor Day.

DECISION NO. NY85-3056

FOOTNOTES (CONTINUED)

j. Additional Security Benefit: $6.00 per day, provided the employee has earned at least 4 hours in the working day; $2.00 per day for jobbing.

k. Paid Holidays: A through P, plus Lincoln's Birthday, Washington's Birthday, Columbus Day, Election Day and Veteran's Day, provided the employee works one day in the payroll week in which the holiday occurs.

l. Paid Holidays: A, and C through P, Lincoln's Birthday and Veteran's Day, except if the holiday falls on a Sunday; plus B, Washington's Birthday and Columbus Day.

Paid Vacation: Employees who have worked for the same employer for 6 months - 1 week; 12 months - weeks; 60 months - 3 weeks.

CLASSIFICATION DESCRIPTIONS

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION)

Class 1: Double drum hoist.
Class 2: Stone derrick; cranes; cherrypickers.
Class 3: Hoists; fork lift; house cars, plasterers (platform machine), plaster bucket, plasterer pump, compressors--welding machine (cutting concrete-tank work), point spraying, sandblasting, and all equipment used for hoisting materials.
Class 4: Cranes - all types (crawler or truck):
a. 100 ft. to 149 ft. boom.
b. 150 ft. to 249 ft. boom.
c. 250 ft. to 349 ft. boom.
d. 350 ft. to 450 ft. boom.
Class 5: Steel erection:
a. Three drum derricks.
b. Cranes, two-drum derricks, cherrypickers.
c. Compressors.
d. Welding machines.
Class 6: Tower cranes.

DECISION NO. NY85-3056

POWER EQUIPMENT OPERATOR (BUILDING CONSTRUCTION - MAINTENANCE)

Class 1: Installing, repairing, maintaining, dismantling of all equipment including; steel cutting and bending machines, mine hoists, tower cranes, linden peine, lorrain, liebner, mannes or machines of a similar nature.

Class 2: Operating, installing, repairing, maintaining, dismantling: (all pumps regardless of motor power and size except river cofferdam pumps and wellpoint pumps, mechanical heaters, generators, concrete mixers with loading device, motor generators when used for temporary power and lights.

Class 3: (All gasoline, electric, diesel or air operated) gradalls concrete pumps, power houses, driving truck cranes, driving and operating fuel and grease trucks.

Class 4: All gasoline, electric, diesel or air operated cranes, backhoes, trenching machines, gunite machines; compressors (3 or more in battery); overhead cranes in power houses.

POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION)

Class 1: Backhoes; power shovels; steel erection.
Class 2: Mine hoists and crane (used as mine hoist).
Class 3: Gradalls; keystones; cranes (on land or with digging buckets including sand dock cranes, bridge cranes, clamshels, draglines), trenching machines.
Class 4: Piledrivers, riggers, derrick boats and tunnel shovels.
Class 5: Raise bore drill.
Class 6: Tunnel mucking machines, back filling machines, cranes, paver dual drum.
Class 7: Pavers, cableways, land derricks, power houses (low pressure units), asphalt spreader, auto grades;
Class 8: Elevators.
Class 9: Power houses, (other than above), double drum hoists, concrete pumps.
Class 10: Portable compressors (used for steel erection), compressors (3 or more in battery), well point pumps, tugger machines (compressed air caissons); drilled-in-caissons, sail solidification equipment, welding machines (used for steel erection), churn drill.
Class 11: Rollers (irrespective of motor power), concrete mixers,
Class 12: Concrete breaking machines, single drum hoists, locomotives (over 10 tons), cherrypicker, hydraulic cranes.
Class 13: River cofferdam pumps, welding machines, portable compressors (not over 100 ft. apart), high pressure boilers, push button machines.

BILLING CODE 4510-27-C

Page 6

DECISION NO. NY85-3056

POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION)
(CONTINUED)

Class 14: Onsite asphalt and concrete plant engineer.
Class 15: Vibrating hammer console.
Class 16: Boilers.
Class 17: Off shift compressor.
Class 18: Utility compressor.
Class 19: Asphalt plant.

POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION-MAINTENANCE)

Maintenance Engineer:

Class 1: Installing, repairing, dismantling of all equipment.
Class 2: Maintaining of all pumps and generators

Junior Engineer:

Class 3: Cherrypickers (20 tons and over) and loaders (6 Cubic yards and over).
Class 4: Bulldozer, backhoes, loaders, and machines of a similar nature.
Class 5: Tractors, post hole, diggers, rollers and machines of a similar nature.

Firemen:

Class 6: Steam operated water rigger, steam shovel and cranes,

Oilers:

Class 7: Gasoline, electric, oil diesel or air operated shovel.
Class 8: Oilers on shovels, dredglines backhoes, keystones, gunnite machines.

(13)

[FR Doc. 85-28850 Filed 12-5-85; 8:45 am]

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice of New Publication Procedures

Beginning January 3, 1986, general wage determinations issued under the Davis-Bacon and Related Act will no longer be published in the **Federal Register.** Instead, notices of wage determinations issued will be published in the **Federal Register.** General wage determinations will be published in full in the Government Printing Office (GPO) document entitled *"General Wage Determinations Issued Under The Davis-Bacon And Related Acts."* This change is being made to enhance the availability and use of Davis-Bacon wage determinations information while lowering Federal Government costs.

The GPO publication *"General Wage Determinations Issued Under The Davis-Bacon And Related Acts"* is organized into three volumes—East, Central, and West. Subscriptions may be purchased for one, two, or all three volumes (at a cost of $277 per volume) from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

This publication is to be available for examination at all 80 Regional Government Depository Libraries and many other of the 1,400 Government Depository Libraries across the country. The States covered by each volume are as follows:

Volume I—East

Alabama	North Carolina
Connecticut	Pennsylvania
Delaware	Rhode Island
Florida	South Carolina
Georgia	Tennessee
Kentucky	Vermont
Maine	Virginia
Maryland	West Virginia
Massachusetts	District of Col.
Mississippi	Canal Zone
New Hampshire	Puerto Rico
New Jersey	Virgin Islands
New York	

Volume II—Central

Arkansas	Missouri
Illinois	Nebraska
Indiana	New Mexico
Iowa	Ohio
Kansas	Oklahoma
Louisiana	Texas
Michigan	Wisconsin
Minnesota	

Volume III—West

Alaska	Nevada
Arizona	North Dakota
California	Oregon
Colorado	South Dakota
Hawaii	Utah
Idaho	Washington
Montana	Wyoming

On or about January 1 of each year, an annual edition will be issued that includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers and libraries providing any modifications or supersedeas wage determinations issued. Each volume's annual and weekly editions will be printed in loose-leaf format, thereby facilitating the orderly and continuous availability of a comprehensive listing of up-to-date general wage determinations.

Susan R. Meisinger,

Deputy Under Secretary for Employment Standards.

Herbert J. Cohen,

Deputy Administrator, Wage and Hour Division.

[FR Doc. 85-28851 Filed 12-5-85; 8:45 am]

BILLING CODE 4510-27-M

federal register

Friday
December 6, 1985

Part IV

Department of Health and Human Services

Social Security Administration

20 CFR Parts 404 and 416

Supplemental Security Income; Disability and Blindness Determination; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

Supplemental Security Income; Disability and Blindness Determinations

AGENCY: Social Security Administration, HHS.

ACTION: Final Rules.

SUMMARY: Pub. L. 98–265 requires a periodic review of the continuing entitlement of persons receiving disability benefits. Section 2 of the Social Security Disability Benefits Reform Act of 1984, Pub. L. 98–460, provides a standard for that review and all other determinations that disability has ended. The standard is that disability ends only for those beneficiaries who have any medical improvement in their impairment(s) and who can perform substantial gainful activity (SGA) or to whom certain exceptions apply. The standard of review provision is the cornerstone of a new continuing disability review process which is intended to promote uniform administration of the disability programs.

These final regulations set out a review process, the objective of which is to assure an accurate, fair, adminstratively efficient and nationally consistent review process within the meaning of the law. The regulations are designed to clearly explain how the new review process will work including the definition of medical improvement—that no benefits will be terminated unless substantial evidence shows that medical improvement has occurred or one of the exceptions to medical improvement applies and that (except for certain limited situations) the person can do SGA.

These regulations also provide, in cases where a person's benefits are being ceased because the medical or vocational evidence shows, after application of the medical improvement standard, that the person is no longer disabled, that the month of cessation (i.e., the last month in which a person is still considered disabled) will be no earlier than the month in which we mail a notice to the beneficiary saying that the information we have shows that he or she is no longer disabled or blind.

DATE: These rules are effective December 6, 1985. Because of the great deal of public concern that greeted publication of the proposed rules on the standard of review, the extensive nature of the changes made as a result of public comments, and the public interest that can be expected to accompany publication of these final rules, we will reassess the policies contained within then based on our actual operating experience and any public reaction subsequent to their publication.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7337.

SUPPLEMENTARY INFORMATION: These regulations finalize proposed rules published in the **Federal Register** as a Notice of Proposed Rulemaking on April 30, 1985 (50 FR 18432). They implement section 2 of Pub. L. 98–460. Interested persons, organizations and groups were invited to submit data, views, or comments pertaining to the proposed rules within a period of 45 days from the date of publication of notice. The comment period ended on June 14, 1985. After carefully considering all the comments submitted, extensive changes have been made to the proposed rules based on those comments. These changes and clarifications will be explained later in this preamble. We also reply to the issues raised in the comments we received. Additionally, these regulations finalize proposed rules published on May 16, 1983 (48 FR 21970) stating criteria for determining when a person's disability or blindness will be determined to have ended. Because both of those publications dealt with the same general subject, whether disability continues or ends and, if it ends, when, and made revisions to many of the same sections, we decided to finalize both sets of proposed changes with this one publication.

Standard of Review for Termination of Disability Benefits

These regulations implement section 2 of Pub. L. 98–460, which provides the standard of review for determining whether disability continues.

Prior to October 9, 1984, (the effective date of Pub. L. 98–460) there was no statutory requirement that there be any medical improvement in a person's impairment(s) before his or her benefits based on disability could be terminated. A decision to continue or cease benefits was based on current evidence which established whether a person was able to do SGA. A sequential evaluation process (see 20 CFR 404.1520 and 416.920) was followed.

A person's entitlement to benefits could also be terminated if he or she demonstrated the ability to do SGA following completion of a trial work period, actually performed SGA (where he or she was not entitled to a trial work period); failed to cooperate with us in a review of whether he or she remained disabled; his or her whereabouts were unknown (except in title XVI cases in which suspension would be the proper action); or he or she failed, without good cause, to follow prescribed treatment that could be expected to restore the ability to work.

Pub. L. 98–460 (section 2) requires that the Secretary prescribe regulations to implement the standard of review for determining whether disability continues, including a medical improvement provision (with certain exceptions). Section 2 is intended to promote administration of the program in a uniform manner nationwide by making explicit to the public, to State agencies which make disability determinations for the Social Security Administration (SSA), and to other adjudicators in the system the standard to be applied in determining continuing eligibility for benefits—the standard as set forth in the statute.

The Congressional Conference Committee Report on the new statute noted that agreement was reached "to strike a balance between the concern that a medical improvement standard could be interpreted to grant claimants a presumption of eligibility, which might make it extremely difficult to remove ineligible individuals from the benefit rolls, and the concern that the absence of an explicit standard of review . . . could be interpreted to imply a presumption of ineligibility or to allow arbitrary termination decisions, which might lead to many individuals being improperly removed from the rolls."

Under this provision, which is reflected in these implementing regulations, a recipient of Social Security disability benefits or Supplemental Security Income (SSI) disability benefits or related benefits may be "determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment(s) on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by" substantial evidence of at least one of the following:

1. There has been any medical improvement in the individual's impairment(s) (other than improvement not related to his or her ability to work) and he or she is able to engage in substantial gainful activity (SGA);

2. That (except for SSI recipients eligible to receive benefits under section

1619) new medical evidence and a new assessment of the individual's residual functional capacity demonstrate that, although there has not been any medical improvement in the individual's impairment(s), (a) he or she is a beneficiary of advances in medical or vocational therapy or technology, related to his or her ability to work, and is able to perform SGA, or (b) he or she has undergone vocational therapy, related to his or her ability to work, and is able to perform SGA;

3. That, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment(s) is not as disabling as it was considered to be at the time of the most recent prior disability determination and that, therefore, the individual is able to engage in SGA; or

4. That, as demonstrated on the basis of evidence on the record at the time of any prior favorable disability determination or newly obtained evidence relating to that determination, a prior determination was in error.

Regardless of the new medical improvement provision and regardless of at what point in the review process it becomes known or occurs, disability can be found to have ceased if the prior determination was fradulently obtained or if the beneficiary is engaged in SGA (except for SSI recipients eligible to receive benefits under section 1619 of the Social Security Act), cannot be located, or fails, without good cause, to cooperate in the continuing disability review (CDR) or to follow prescribed treatment which would be expected to restore his or her ability to engage in SGA.

The law requires that any determination under this medical improvement standard be made on a neutral basis—without any initial inference being drawn from the fact that an individual had previously been determined to be disabled—and on the basis of all evidence (both prior and new) available in the case file concerning the individual's prior or current condition.

Similar provisions, modified to reflect the concept of ability to perform gainful activity, apply to widows, widowers, and surviving divorced spouses and for title XVI, disabled children.

Revised Rules for Certain Medical Cessation Cases

In addition to setting forth a new continuing disability review standard, these regulations also describe a policy decision that has been in effect since March 1982 that will be applied in concert with the medical improvement review standard. The policy decision, which these changes reflect, provides that in certain cases where a person's benefits are being stopped after application of the medical improvement standard or one of the limited number of exceptions to the standard disability will be found to have ceased as of the month notice is mailed to the person.

Under prior regulations we could find that a person's disability ended earlier than the month in which we made the determination to cease benefits, even though the beneficiary may not have been fully aware that, at the earlier point in time, medical and vocational evidence showed that he or she had regained the capacity to perform substantial gainful activity. These changes amend the regulations to provide that the month that we mail a notice to the beneficiary in medical cessation cases that he or she is no longer considered disabled or blind, generally will be the month of cessation (i.e., the last month in which a person is still considered disabled or blind). A person receives benefits for the month of cessation, which under these regulations is the month of mailed notification to a beneficiary, and the two succeeding months.

Regulatory Provisions

The following discussion outlines how the regulations implement the statutory provisions.

Standard of Review for Termination of Disability Benefits

Pub. L. 96-265 requires a periodic review of the continuing entitlement of certain persons receiving disability benefits. In implementation of section 2 of Pub. L. 98-460, these regulations set out standards for that review and all other determinations that disability has ended. Those standards make it clear that decisions will be made on a neutral basis—without any initial inference being drawn from the fact that the individual had been determined to be disabled—and based upon all evidence (both prior and new) available in the case file concerning the individual's prior or current condition. They also make clear that upon review, eligibility for such benefits will cease only if substantial evidence shows that there has been any medical improvement in the individual's impairment(s) (or one of the exceptions to medical improvement applies) and that (except in certain limited situations) the person can do SGA. They apply to recipients of title II disabled worker's insurance benefits, disabled child's benefits, disabled widow(er)'s and disabled surviving divorced spouse's benefits, and recipients of title XVI Supplemental Security Income benefits based on disability. They do not apply to persons who are receiving title XVI benefits due to blindness because the language in section 2 of Pub. L. 98-460 relating to the SSI program refers only to a "recipient of benefits based on disability." The SSI program treats disabled and blind persons as comprising two different and distinct categories. Each category has several provisions not in common with the other category, so the need for uniformity of provisions could not be used as a basis for determining that the standard should apply to recipients of SSI benefits because of blindness.

The rules in §§ 404.1579, 404.1586, 404.1594, and 416.994 tell how we will apply the continuing eligibility standards, discuss the evaluation process we will use to determine whether an individual continues to be disabled, and provide explanations of terms used in these regulations.

The regulations begin with a general discussion of the continuing disability review process and the new standard for review. They then explain the terms and definitions related to the review process including the cornerstone of the new process: medical improvement. After these important terms and definitions are set forth, the process by which the existence of medical improvement will be determined, and, if any, its relation to the individual's ability to work is discussed. The regulations continue with an explanation of the statutory exceptions to the medical improvement standard, i.e., those limited instances where a person's disability may be found to have ended even though medical improvement has not occurred. Finally, following this explanation is a discussion of the sequence of review that will be followed in addressing the various elements of the medical improvement standard.

These regulations define medical improvement as any decrease in the severity of the individual's impairment(s) since the most recent favorable medical determination as demonstrated by changes (improvement) in the symptoms, signs and laboratory findings associated with the impairment(s). If medical improvement has occurred, consideration must be given to whether it is related to the person's ability to do work, because the statute requires that medical improvement not related to the person's ability to do work should be disregarded. The regulations explain that in deciding whether medical improvement is related to the ability to do work, it must be determined if there

has been any increase in the individual's functional capacity to do basic work activities since the most recent favorable medical determination. This is done by comparing the functional capacity assessment made at the time of the most recent favorable determination to the current functional capacity. Unless an objective comparison shows an increase in the functional capacity based on actual changes in the clinical evidence, any medical improvement will not be considered to be related to the person's ability to do work. ("Functional capacity to do basic work activities" is not a new concept in the disability program. It is simply a more descriptive phrase that is equivalent to "ability to do basic work activities.")

Determining whether medical improvement is related to the ability to do work by assessing the person's functional capacity to do basic work activities is consistent with the statutory definition of disability, i.e., the inability to engage in SGA by reason of a medically determinable impairment or combination of impairments.

Under these regulations, medical improvement is decided based on whether there has been any medical improvement in the impairment(s) which was present at the time of the most recent medical decision that a person was disabled or continued to be disabled. However, disability will continue even where medical improvement related to the individual's ability to do work is shown in those impairments, when the evidence, based on all the person's current impairment(s), shows he or she is not able to engage in SGA unless one of the exceptions is applicable. (Widow(er)s, surviving divorced spouses, and title XVI disabled children need only show the capacity to engage in gainful activity.)

There are two groups of exceptions to medical improvement which this regulation defines.

The first group of exceptions to medical improvement includes limited situations where although medical improvement has not occurred, the ability to do SGA is now shown by current evidence. The basic objective of defining this first group of exceptions is to indicate those limited situations where the person's entitlement to benefits should be terminated because the person is shown to be presently able to engage in SGA, even though medical improvement had not occurred. As the Senate Finance Committee report (Report No. 98-466, p.9) indicates, it was not Congress' intention "to grandfather people onto the benefit rolls who can perform substantial gainful activity, . . ."

The regulations define these exceptions by describing under what circumstances they will be found and by giving examples.

The first group of exceptions are:

1. Substantial evidence shows that the person can do SGA and has been the beneficiary of advances in medical or vocational therapy or technology (related to the person's ability to work).

2. Substantial evidence shows that the person can do SGA and has undergone vocational therapy (related to ability to work).

3. Substantial evidence shows that based on new or improved diagnostic techniques or evaluations, the person is not so disabled as was believed at the time of the most recent prior decision and the person can do SGA.

4. Substantial evidence shows that a prior decision was in error.

5. The person is actually performing substantial gainful activity.

The second group of exceptions covers certain Congressionally recognized limited situations where cessation is appropriate without a finding that the individual can engage in SGA. Included are:

1. The prior decision was fraudulently obtained.

2. The person fails (without good cause) to cooperate in a review of his or her entitlement to benefits.

3. The person cannot be located.

4. The person fails (without good cause) to follow prescribed treatment which would be expected to restore ability to do sustantial gainful activity.

Where medical improvement related to the individual's ability to work is shown to have occurred or one or more of the first group of exceptions applies, the individual must also be found able to engage in SGA before disability is determined to have ended. If the ability to engage in SGA cannot be determined on the basis of medical evidence, we will make an assessment of the person's residual functional capacity. This assessment will be used to determine whether the individual is able to do his or her past work or, if not, whether, when the person's age, education and prior work experience are considered, he or she can do other work which exists in significant numbers in the national economy. The determination of ability to engage in SGA will be based on all the person's impairments (including any subsequent impairment(s)) that may have arisen since the most recent favorable medical decision. These regulations provide for a new review process applicable only to continuing disability review issues, one that assures the neutrality and uniformity of decisions made under it while providing for efficiency of administration by identifying instances where disability continues at the earliest possible time. Under the new process we will, generally:

1. Determine whether any work activity constitutes SGA.

2. Determine whether the severity of the individual's current impairment(s), meets or equals the requirements of Appendix 1 to this subpart.

3. Determine whether medical improvement related to the person's ability to do work has occurred or whether an exception applies.

4. Determine whether the individual's current impairment(s) is severe.

5. Determine whether the individual is able to engage in SGA doing his or her past work or some other work.

For title II disabled widow(er)'s, surviving divorced spouses and title XVI children whose disability is based on whether their impairments meet or equal the severity requirements of Appendix 1 of Subpart P of Part 404 alone, the issue of medical improvement and the exceptions will be considered after any current work activity is considered, but before consideration of current severity of the person's impairment(s). This modification from the review process used for other categories of beneficiaries is made to further ensure the neutrality of the decision in these cases where, by statute, severity of the impairment(s) is determinative without consideration of vocational factors.

A decision to find disability to have ended can only be made on the basis of a well rationalized decision that medical improvement related to work ability, or an exception, is shown *and* a well rationalized decision that the person can do SGA. An explanation of the basis for the decision and how it was reached will be required to support both continuance and cessation decisions. Where more than one basis for cessation is known to apply, that fact will be reflected.

These regulations have been written to carry out both the letter and intent of the law in order to provide for a fair, accurate, nationally consistent review of continuing entitlement to disability benefits in accordance with statutory requirements.

Revised Rules for Certain Medical Cessation Cases

These regulations provide that when a person's benefits are being stopped for medical reasons disability will generally be found to have ceased as of the month

a notice of cessation is mailed to the person. These changes apply to recipients of title II disabled worker's insurance benefits, disabled child benefits, disabled widow(er)'s and disabled surviving divorced spouse's benefits, and recipients of title XVI supplemental security income benefits based on disability or blindness. Because it is generally possible to establish precise cessation dates in certain cases, we will continue to make retroactive cessations, where appropriate evidence establishes a person is no longer disabled or blind because he or she—

1. Was found to be disabled only for a specified period of time in the past, i.e., a "closed period"; (§ 404.320)

2. Returned to work and demonstrated the ability to do substantial gainful activity;

3. Was asked to give us medical or other information or to go for a physical or mental examination by a certain date and refused without good cause to do so;

4. Has failed to keep us advised of his or her whereabouts and we are unable to find the person, (except in title XVI cases where a suspension would be the proper action);

5. Has failed, without a good reason, to follow treatment prescribed by his or her physician that can be expected to restore his or her ability to work;

6. Was told by his or her physician at an earlier date that he or she could return to work provided there is no substantial conflict between the physician's and the beneficiary's statements regarding the individual's awareness of his or her capacity for work and the earlier date is supported by the medical evidence; or

7. Returned to full-time work with no significant medical limitations and acknowledges the fact that medical improvement has occurred and the condition had been expected to improve.

These regulations provide that generally a person's disability or blindness will not be found to have ceased earlier than the month in which we mail a written notice to him or her saying that the information we have shows that he or she is not disabled or blind. Generally, the month of notice will be considered the month of cessation unless one of the seven above exceptions applies. These changes amend §§ 404.1579, 404.1586, 404.1594, 416.986, and 416.994 to reflect this revised policy.

Comments Received Following Publication of the Notice of Proposed Rulemaking

Standard of Review for Termination of Disability Benefits

Subsequent to the publication of the Notice of Proposed Rulemaking in the **Federal Register** (50 FR 18432) on April 30, 1985, we received letters from over 100 different sources. These sources included State disability determination services which make disability determinations, other State agencies, professional organizations such as the American Bar Association, legal aid groups, special interest groups such as the Coalition to Protect Social Security and the American Foundation for the Blind, Members of Congress and private individuals. Many of the commenters addressed several concerns regarding the proposed rules so that there were, in total, literally hundreds of specific comments. These hundreds of specific comments were categorized in five areas for purposes of our review and consideration:

1. Issues Concerning the Definition of Medical Improvement.
2. Issues Concerning the Evaluation Process.
3. Issues Concerning the "Error" Exception.
4. Issues Concerning All Other "First Group" Exceptions.
5. Miscellaneous Issues.

We have carefully reviewed all the comments and have adopted many recommendations. The changes we have made on the basis of public comments are identified in the following discussion of issues raised in the comments. This discussion is organized to correspond to the five general categories of comments. Many of the written comments, by necessity, had to be condensed, summarized or paraphrased. In doing this, we believe we have expressed everyone's views adequately and responded to the issues raised.

One general comment needs to be discussed first. Several commenters believed that the proposed regulations were not organized in a logical fashion, thought the language was unclear or imprecise, or overall found the proposed rules confusing. In response, the rules within each section have been revised into a more logical sequence of presentation so that, following a brief general discussion, medical improvement is defined and discussed first. This is followed by additional terms and definitions and then by a discussion of the two groups of exceptions to medical improvement. The intent of the primary points of the medical improvement standard and specifically how we decide whether medical improvement is work related is discussed next. We then describe the evaluation process for continuing disability reviews. Finally, the rules for finding when disability ends are discussed if such a decision is made.

Many of the explanations and discussions have been expanded and clarified, and additional examples added to make the meaning of the rules more precise. We believe the result is a major improvement over the rules as published in the Notice of Proposed Rulemaking and, thus, the uniformity and equity with which they are applied can only be enhanced.

1. Issues Concerning the Definition of Medical Improvement

Comment: Many commenters suggested that medical improvement should be defined in terms of a decrease in medical severity rather than as an increase in functional capacity for basic work activities. This functional definition was described in the comment as highly subjective and in opposition to the intent of Congress because it did not offer protection against an arbitrary finding of medical improvement based on ascribed "functional" change in the face of unchanged medical findings. To accommodate to statutory language that medical improvement not related to the person's ability to work should be disregarded, the commenters suggested improvement in impairments not contributing to the person's ability to work should be disregarded. The commenters also suggested requiring that a "significant amount" of improvement had occurred. Some commenters urged a dual definition, one based on a decrease in severity *and* an increase in functional capacity.

Response: Our intention had always been that a decrease in severity had to precede any determination that there had been an increase in functional capacity. This was evidenced by language in the proposed rules which stated that an increase in functional capacity based on unchanged medical findings would be considered a substitution of judgment by the adjudicator and not medical improvement. The rules have been rewritten, however, to remove any question. Medical improvement is now defined in terms of a decrease in severity as shown by change in symptoms, signs and laboratory findings. If there are no changes, there is no medical improvement. If such medical improvement has occurred, the statute requires a determination as to whether this medical improvement is

related to the person's ability to work. This determination will be made based on whether there has been an increase in functional capacity to do basic work activities. We continue to believe this basis for determining the relationship to ability to work is necessary both because of the continued connection with the wording of the medical improvement provision in the statute (i.e., any medical improvement, other than that unrelated to the ability to work) and the statutory definition of disability (i.e., inability to engage in SGA). It also provides a more clear cut measurement of medical improvement than would attempt at defining when there is "significant" medical improvement or when a "minor" impairment not related to disability is involved.

Comment: One commenter stated that in making the comparison of functional capacity (as required by the definition of medical improvement in the proposed rules) based on all the impairments existing at the time of the most recent favorable medical decision with the functional capacity based on the current status of those same impairments, some persons' benefits will be terminated even though their overall current condition has worsened when subsequent impairments are considered.

Response: While only the impairment(s) which existed at the time of the prior decision will be compared in making the medical improvement decision and, if needed, the decision as to whether medical improvement is related to the person's ability to work, no one will be found to be no longer disabled unless he or she is now able to engage in SGA when all his or her current impairments have been considered unless certain exceptions apply. This provision allows consideration of all impairments in assessing whether a person meets the definition of disability and provides that only persons who have medically improved and can presently do SGA are found no longer disabled. This is in accordance with the law; therefore, we do not belive any revisions are needed.

Comment: Several commenters stated that decisions regarding whether medical improvement had occurred should consider the likelihood of temporary remission common to some impairments such as multiple sclerosis and certain mental impairments.

Response: We have added language to the rules which addresses this comment. Temporary remissions will not be considered to be medical improvement, and any decision in such cases will be based on a longitudinal basis that takes into account the history of and likelihood for exacerbations and remissions.

Comment: There were several comments that some terms used in the definition of medical improvement needed clarification, e.g., "medical findings," "evidence" and "functional capacity."

Response: We have accommodated these suggestions either by adding explanatory language in the revised rules or by adding a reference to another part of the regulations which provides a definition.

Comment: One commenter believed that further guidelines were needed for the treatment of medical improvement in lost folder situations.

Response: More detailed language has been added to the regulations to explain our actions when the prior folder is lost. This additional explanation prescribes the same result as contained in the proposed rules: If the prior folder is lost and relevant parts cannot be reconstructed, medical improvement cannot be found.

2. Issues Concerning the Evaluation Process

Comment: Many commenters stated that medical improvement should be considered first in the evaluation process because it avoids development of a negative "mind set": by adjudicators. They reasoned that if consideration is given, first, to whether a person's impairment(s) is currently "not severe" and this determination is made, the adjudicator may feel compelled to find either that medical improvement has occurred or one of the exceptions applies. The Congress, they argued further, intended that continuances should be based, first on a consideration of medical improvement, not on a consideration of the individual's current impairment.

Response: We have moved the medical improvement and exceptions step forward in the process so that it precedes any decision regarding whether the individual's impairment is "not severe." We will still first consider whether the person is actually engaging in SGA, then whether the severity of the impairment(s) meets or equals the level of severity contemplated in Appendix 1 to this subpart before considering whether medical improvement has occurred or an exception applies. As we estimated that disability has been continued in approximately 35 percent of cases in the past on the basis of the impairments meeting or equaling Appendix 1 severity, we believe it is important to consider the listings early in the process in order to identify continuances quickly. Since the determination of whether the individual's impairment(s) meets or equals Appendix 1 severity is only a preliminary step in determining disability, we believe the "mind set" argument is not valid (see comment below regarding disabled widow(er)s, surviving divorced spouses and title XVI disabled children). Finally, when this step can be done and benefits continued the more complex, more resource intensive comparison of current and prior conditions is not necessary.

Comment: Many commenters suggested that it is unfair to evaluate whether a person's impairment(s) meets or equals the severity contemplated in Appendix 1 before considering medical improvement in claims involving disabled widows, widowers, surviving divorced spouses and title XVI disabled children, because it can prejudice adjudicators against these claimants, i.e., a negative "mind set" will be developed.

Response: We have revised the rules for these categories of beneficiaries so that medical improvement or the presence of an exception is considered before the question of whether Appendix 1 severity is met or equaled. We do not believe the final results, i.e., the number of persons whose disability is found to continue or end, will change under this revision.

Comment: Several commenters stated that the "not severe" step should be abolished as it prejudices adjudicators.

Response: The concept that a person's ability to work can, in some cases, be determined on the basis of medical evidence alone, is an important one which was supported by the Congress in discussions leading to Pub. L. 98–460. (Congressional conferees noted that the current sequential evaluation process allows such a determination and stated that they did not intend either to eliminate or impair the use of that process.) Using this concept, medical evidence may demonstrate such insignificant limitations in a person's physical and/or mental ability to perform basic work activities that a finding of ability to engage in SGA may be made without further consideration of the person's age, education, or work experience. This step is, therefore, retained in the evaluation process. As discussed above, however, the evaluation process has been revised so that consideration of the "not severe" step follows a decision regarding whether medical improvement has occurred or an exception applies.

3. Issues Concerning the "Error" Exception

Comment: Many commenters stated that the "error" exception was defined far too broadly, and that abuse of the medical improvement standard could result. Including documentation deficiencies in this definition was singled out by large numbers of commenters as being particularly objectionable.

Response: The legislative history of the error exception shows that the Congress intended that this exception should include more than just "clear error" cases. (The conference report shows that language in the House Bill that said that the Secretary would have to show that the prior determination was "clearly erroneous" was replaced by language stating that substantial evidence shows "that a prior determination was in error.") In developing the proposed rules, we tried to define the limited instances beyond "error on the face" and "new material evidence" situations (which have been a part of the reopening concept for some time) where "error" could also be found. It is apparent from the comments received, that the language of the proposed rule was open to many varying interpretations. The language of this regulation has, therefore, been completely revised and additional examples included in order to clarify the definition of error. Error can be found only if (1) there was an "error on the face" of the record, (2) required and material evidence which was missing at the time of the prior evaluation becomes available now, and it is clearly shown that had such evidence been used in the original determination, disability would not have been found, or (3) new evidence relating to the prior determination refutes the prior conclusions. The language in the revised rule as related to item 2 in this response paraphrases language provided by one of the commenters.

Comment: Several commenters stated that the error exception could be used to disregard the long-accepted rules of administrative finality. They felt this is improper because the claimant should, after some period of time, be able to rely on the decision in his or her case becoming "final."

Response: We discuss above the revisions we have made to the regulations on this provision in order to clarify our intention that it be used in limited situations only. The Congress provided for the error exception to be used in finding that disability has ended (or never existed) outside the confines of the rules on administrative finality and we, in turn, have written this error exception into the regulations. The error exception will found to apply under the same circumstances where a reopening could be considered, "error on the face of the evidence" for example. The error exception can apply, however, in those situations where the time limits for reopening a decision have passed because benefits will be ended prospectively only. Conversely, where the error exception applies on such a basis, reopening will be considered if the time limits have not passed.

Comment: The inclusion of "better, more conclusive" test results in the proposed regulation definition of error, allows too much flexibility and subjectivity as it is always possible to obtain "better" evidence.

Response: As discussed above, the language used in the definition of this exception has been extensively revised to clarify its limited use. As part of this revision, the allusion to "better, more conclusive" tests has been eliminated.

4. Issues Concerning All the Other "First Group" Exceptions

Comment: Many commenters believe the exceptions were drafted so broadly that virtually anyone could be taken off the disability rolls.

Response: Again, the language in the revised rules has been extensively changed to clarify our original intent that these exceptions only apply in the limited circumstances described by the statute and discussed in the legislative history. Additional examples have been added to explain the limited way in which these exceptions will apply. Also, in introducing the first group of exceptions, the regulatory language now specifically states that they apply in limited situations.

Comment: Many commenters suggested that the "new or improved" techniques exception was not well defined in the proposed rules and specifically should not include all changes to the Listing of Impairments found in Appendix 1. To do so, they said, would be directly contrary to the intent of Congress that claimants should not be subjected to revised adjudicative criteria when their claims are reviewed. (This implication of these comments was that every listing change would be considered to be a new or improved diagnostic or evaluative technique.)

Response: The proposed rules stated that "changes in diagnostic or evaluative techniques appearing in the Listing of Impairments" would be included in this definition. By this we meant not all listings but, rather, only those specifying new or improved techniques as a basis for determining impairment severity. The language in the regulation section concerning this exception has been revised not only to make this clearer, but to also include language as to how we identify new or improved techniques and how claimants will know which listings are considered to meet this definition. Those listings which are considered to be new or improved techniques will be identified in two ways: A list of new or improved techniques which have become generally available since 1970 and when they became generally available, will be published in the *Notices* section of the **Federal Register.** This will include those listings in the current (July 1979) version of Appendix 1 and the soon to be published revisions to Appendix 1 which specify a new or improved technique. All future revisions to Appendix 1 will, at the time of publication as a Notice of Proposed Rulemaking, identify those listings specifying new or improved techniques. The public will, thus, not only be given advance notice of such changes but, also, will be given the opportunity to comment on the changes and their use as new or improved techniques. Additionally, it is stated in the regulations that no claims would be processed under this exception until we publish the list of new or improved techniques which have come into effect since 1970.

Comment: Many commenters also said that the revised adult (Part A) listings for nonmental impairments should not be published until public hearings are held or they are (re)published as a Notice of Proposed Rulemaking.

Response: These listings were published in May 1982 as a proposed rule and revised after consideration of public comments we received on the proposal. Because of the care that is taken in developing proposed rules, incorporating public comments and crafting final rules, the regulatory process is a lengthy one. The process for the revised adult listings for nonmental impairments has been longer than most due to many factors. In order not to delay their use any longer, we are, therefore, proceeding with the necessary action to publish those regulations in final. In appreciation of the fact that some time has passed since they were first subjected to public scrutiny, public comments will be invited upon their publication. These comments, if any, will be considered to formulate any subsequent changes that we may decide to make in the listings.

Comment: Several commenters felt that the proposed rule on "advances in

medical or vocational therapy or technology" should be revised to make it clear that the individual must have actually realized a benefit from such advances which has affected the person's ability to do basic work activities before this exception can apply.

Response: We agree and have made appropriate changes in the regulatory language which previously stated the advances "may favorably affect" the person's ability to do work.

Comment: Several commenters asked how the "advances" exception would apply, but not be reflected in a finding of medical improvement.

Response: We believe that most cases in which this exception could be applied, medical improvement related to the person's ability to do work, as defined in the revised rules, will be found. The regulatory language has been revised to reflect the very limited use of this exception because of this fact.

Comment: A few commenters asked if claimants currently undergoing some advanced medical therapy or vocational therapy, but not yet completing their therapy, would come under this exception.

Response: The regulations have been revised to make it clearer how vocational therapy affects a person's ability to do work and to state that where the person has not yet completed a course of treatment, study or training, his or her disability will be continued (unless it is found to end on some other grounds) and a followup scheduled for the expected completion of the therapy.

5. Miscellaneous Concerns

Comment: One commenter stated that the proposed rules do not take into account the combined effects of age and long years on the disability rolls.

Response: The revised regulatory language now includes clarifying language which discusses what is meant by functional capacity for basic work activities, and the relationship between this concept, impairment severity and a person's ability to do work. This discussion further explains that special work evaluation or other appropriate testing will be used to adequately define the functional capacity of an older person who has been receiving disability benefits for a considerable period of time.

Comment: Several commenters stated that the proposed rules did not consider a beneficiary's rights to continued benefits once on the rolls. They felt a presumption of disability should be applied until otherwise overturned.

Response: The expressed intent of the Congress as stated in the report of the Conference Committee is that the continuing disability decision should be made on a neutral basis. No inference should be drawn that disability continues because disability was once found to exist or that disability ends because the issue is being reviewed. The regulatory language reflects the language used in this report.

Comment: One commenter said there should be a requirement that a defined amount of improvement needs to have taken place, not just "any medical improvement."

Response: The statutory language says ". . . there has been *any* medical improvement in the individual's impairment or combination of impairments (other than improvement not related to the individual's ability to work) . . ." (emphasis added). The regulatory language regarding "any medical improvement," therefore, comes directly from that statute. Of course, the evidence must also show that the medical improvement is related to the person's ability to work *and* that the person is also now able to engage in SGA before disability can be said to have ended. Therefore, several protections exist against a person's disability ending solely because of a miniscule amount of improvement in the severity of his or her impairment(s).

Comment: Several commenters asked questions regarding residual functional capacity (RFC) assessments in specific situations. One commenter asked what would be done if an RFC was not prepared, but should have been, at the time of the most recent favorable medical determination. Others commented that if a person met or equaled a listing, it meant only that he or she is deemed unable to engage in SGA, not that the person, actually, is unable to do any basic work activity as the proposed rules stated.

Response: The regulatory language has been expanded to clarify what is meant by functional capacity to do basic work activities, RFC and the relationship to the ability to do work. Additionally, specific language has been added to explain that we will now make an RFC assessment based on the medical evidence at the time of the most recent favorable medical determination if the RFC was not made previously, but should have been. Further, we must find that the medical improvement is related to the ability to do work, if an individual no longer meets or equals the same listing under which he or she was previously found disabled. References to a person whose impairment(s) meets or equals a listing being unable to do any basic work activities have been deleted.

Comment: Several commenters said that references to work activity and functional capacity for disabled widows, widowers, surviving divorced spouses and title XVI disabled children was inappropriate because they do not apply to these categories of claimants.

Response: The emphasis on medical severity in the clarifying revisions made to the rules has removed the functional capacity references for these categories of beneficiaries. References to work activity remain, however, and are appropriate. Work activity, potentially, can always affect continuing disability regardless of the category of beneficiary. Meeting or equaling a listing is deemed sufficient to preclude any gainful activity but only in the absence of evidence to the contrary such as the individual's actual performance of SGA.

Comment: Two commenters felt the inclusion of actual work activity at the SGA level in the first group of exceptions removed the protection of the trial work period.

Response: Language in the proposed rules states that the exception would operate after the completion of the trial work period, if applicable. This language is retained in the current rules.

Additional Change

As noted above, these rules have been extensively reorganized and rewritten in answer to general comments that the proposed rules were difficult to understand and lacked clarity. During the process of rewriting the rules, we noted that the explanation of what is meant by "medical condition" was redundant in light of changes to other sections of the rules. The terms "medical condition," and an explanation of what is meant by the term have, therefore, been removed from the revised language of this regulation. No change in the intention or meaning of these rules is intended by, or should be inferred from, the elimination of this language.

Revised Rules for Certain Medical Cessation Cases

These regulations on month of cessation were published as proposed rules on May 16, 1983 (48 FR 21970). Interested parties were given 60 days within which to submit comments. We received letters from six sources. Four of the writers favored the proposed change to establish the month in which a person's disability ceases as the month in which we mail notice of the cessation to that person. One writer asked that we apply this new policy retroactively as well as prospectively. Two of the writers suggested that language be added to the regulations requiring that

there be no doubt that the beneficiary is aware he or she is able to work before benefits are ceased. We have addressed these comments, as well as others that were received, below:

Comment: One writer suggested that this new policy be applied retroactively as well as prospectively. The commenter urged us to apply this new policy in all prior instances in which disability recipients were determined to have been overpaid benefits because their disabilities were found to have ceased sometime prior to their receipt of the notice of the cessation.

Response: Generally, when we administratively adopt a new policy we apply it only to claims on which a final decision has not been made, i.e., we will not reopen a claim to apply the new policy retroactively where the original determination was correct under the policy then in use.

Accordingly, when we implemented this new policy in March 1982 for determining when disability ceases, we decided to apply it to all disability claims in which a final decision had not been made and to those claims that were reopened.

Comment: This same writer feels that, for purpose of medical cessation, it would be more appropriate for us to use the date on which an individual receives the notice of termination of benefits rather than the date the individual receives the advance notice of planned action. The writer refers to the possibility of overpayments resulting from the lapse of time between the two notices.

Response: The comment incorrectly characterizes the new policy as establishing the month the individual receives the advance notice as being the month disability ceases. Under the new rule, the month diability ceases generally is the month the notice is mailed, not received. However, SSA discontinued the separate advance notice in medical cessation cases under the benefit continuation provisions of section 2 of Pub. L. 97–455. As a single notice is now issued, and the cessation date coincides with the date this notice is mailed, the possibility of overpayments resulting from the lapse of time between two notices has been eliminated.

Comment: Another comment was that the exceptions to this revised cessation policy (i.e., where we cease a person's benefits because of work activity, failure to cooperate, etc.) should apply only where it can be established that the receipient knew that he or she was no longer disabled for benefit purposes.

Response: These changes apply only to certain cases where a person's benefits are stopped for certain reasons. The purpose of this change in policy is to prevent the inequitable retroactive termination of benefits of persons who may have believed in good faith that their disabilities continued. Persons whose situations fall within the exceptions know that they are no longer disabled for benefit purposes. Such persons should not profit from a policy change.

Comment: Several writers were concerned with the exception that applies when a beneficiary's physician tells him or her that his or her condition has improved or that he or she is able to return to work.

Response: We agree with this comment and we have revised the pertinent sections to state that there must be no substantial conflict between the physician's and the beneficiary's statements regarding the individual's awareness of his or her residual functional capacity to perform work related activities.

Comment: One commenter urged us to require by regulation that a disability recipient be notified as to how we determined the date on which his or her disability ceased; including those cases where a retroactive determination is still appropriate.

Response: We believe that under the Administrative Procedure Act such a procedural provision can be included in our administrative instructions. Accordingly, our current POMS instructions (DI A01005.040C.1) specify in accordance with section 205(b)(i) and 1631(c)(1) of the Social Security Act (42 U.S.C. 405(b)(1) and 1383(c)(1)) that personalized explanations be provided for all medical cessations, including those cases where a retroactive cessation is appropriate.

Comment: A commenter suggested that these regulations should address the termination of the benefits of persons who refuse to cooperate with efforts by a vocational rehabilitation agency to return them to gainful activity.

Response: The only purpose of these rules is to revise the date on which disability will be found to have ended for certain persons whose disabilities ceased for medical reasons. While the law provides for stopping payments to a person who, without good cause, refuses to accept vocational rehabilitation (20 CFR 404.422 and 416.1328), no determination is made in those cases as to whether or not the person's disability has ended. We feel any discussion in these rules of nonpayment of benefits for reasons other than the cessation of disability would be inappropriate.

Additional Changes

We revised the last sentence of § 404.1586(a)(4), which concerns the evaluation of work activity of statutory blind persons age 55 or older, to show that the previous work activity to be evaluated under the comparability provision is the work the person did prior to age 55 or prior to becoming blind, whichever is *later;* rather than earlier. This corrects an error made several years ago when this section was rewritten and recodified. This change reflects the policy used when determining if the work done by a statutory blind person age 55 or over shows that he or she is able to do SGA and aligns § 404.1586(a)(4) with § 404.1585 which discusses when such persons may be eligible for a trial work period. In addition, we have added to § 416.994(c)(6), which discusses the month in which we will find a person under age 18 no longer disabled, two exceptions to the general rule that disability will not be found to have ended earlier than the month of notice to the individual. The first exception concerns return to full-time work with no significant medical restrictions. The second exception concerns finding that persons who fail to follow prescribed treatment that can be expected to restore the ability to work are no longer disabled. These two exceptions were discussed in § 416.994(b) of the proposed rules and were erroneously left out of § 416.994(c) when it was published as a proposed rule on May 16, 1983 (48 FR 21970).

Regulatory Procedures

Executive Order No. 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule".

This is a major rule, as defined by Executive Order 12291, as the program costs Exceed $100 million or more yearly. Although the Secretary has discretion in implementation, all viable alternatives result in the same cost. Therefore, the Office of Management and Budget has waived the requirement of Executive Order 12291 that a regulatory impact analysis be prepared.

Paperwork Reduction Act of 1980

These regulations will impose no new reporting and recordkeeping requirements subject to clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant impact on a substantial number of small entities

since they primarily affect only individuals receiving title II and title XVI benefits because of disability. They will have some effect on those States which supplement the Federal SSI benefit and those States where Medicaid eligibility is tied to SSI eligibility. However, a regulatory flexibility analysis as required under Pub. L. 96-354, the Regulatory Flexibility Act, is not necessary.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative practice and procedure,
Death benefits,
Disability benefits,
Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure,
Aged,
Blind,
Disability benefits,
Public assistance progams,
Supplemental Security Income (SSI).

Dated: August. 13, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: September 13, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—[AMENDED]

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart P of Part 404 is revised to read as follows:

Authority: Secs. 202, 205, 216, 221, 222, 223, 225, and 1102 of the Social Security Act, as amended; 42 U.S.C. 402, 405, 416, 421, 422, 423, 425, and 1302; secs. 505 (a) and (c) of Pub. L. 96-265, secs. 2 and 5 of Pub. L. 98-460, 42 U.S.C. 421 and 423.

2. Section 404.1501 is amended by revising paragraphs (d) and (j) to read as follows:

§ 404.1501 Scope of subpart.

* * * * *

(d) Our general rules on evaluating disability if you are filing a new application are stated in §§ 404.1520 through 404.1523. We describe the steps that we go through and the order in which they are considered.

* * * * *

(j) Our rules on when disability continues and stops are contained in §§ 404.1579 and 404.1588 through 404.1598. We explain what your responsibilities are in telling us of any events that may cause a change in your disability status, when you may have a trial work period, and when we will review to see if you are still disabled. We also explain how we consider the issue of medical improvement (and the exceptions to medical improvement) in deciding whether you are still disabled.

* * * * *

3. Section 404.1511 is revised to read as follows:

§ 404.1511 Definition of a disabling impairment.

(a) *Disabled workers and persons disabled since childhood.* If you are entitled to disability cash benefits as a disabled worker or to child's insurance benefits, a disabling impairment is an impairment (or combination of impairments) which, of itself, is so severe that it meets or equals a set of criteria in the Listing of Impairments in Appendix 1 of this subpart or which, when considered with your age, education and work experience, would result in a finding that you are disabled under § 404.1594. In determining whether you have a disabling impairment, earnings are not considered.

(b) *Disabled widows, widowers and surviving divorced spouses.* If you are entitled to disability benefits as a disabled widow, widower, or surviving divorced spouse, a disabling impairment is an impairment (or combination of impairments) which, of itself, is so severe that it meets or equals a set of criteria in the Listing of Impairments in Appendix 1 of this subpart or would result in a finding that you are disabled under § 404.1579. In determining whether you have a disabling impairment, earnings are not considered.

4. Section 404.1579 is revised to read as follows:

§ 404.1579 How we will decide whether your disability continues or ends.

(a) *General.* If you are entitled to disability benefits as a disabled widow, widower, or surviving divorced spouse, there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must address whether one or more exceptions applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases (see paragraph (e) of this section for exceptions) before we can find that you are no longer disabled, we must also show that your impairment(s), as shown by current medical evidence, is no longer deemed, under Appendix 1 of this subpart, sufficient to preclude you from engaging in gainful activity.

(b) *Terms and definitions.* There are several terms and definitions which are important to know in order to understand how we review your claim to determine whether your disability continues.

(1) *Medical improvement.* Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings (see § 404.1528) associated with your impairment(s).

Example 1: You were awarded disability benefits due to a herniated nucleus pulposus which was determined to equal the level of severity contemplated by Listing 1.05.C. At the time of our prior favorable decision, you had had a laminectomy. Postoperatively, a myelogram still showed evidence of a persistent deficit in your lumbar spine. You had pain in your back, and pain and a burning sensation in your right foot and leg. There were no muscle weakness or neurological changes and a modest decrease in motion in your back and leg. When we reviewed your claim your treating physician reported that he had seen you regularly every 2 to 3 months for the past 2 years. No further myelograms had been done, complaints of pain in the back and right leg continued especially on sitting or standing for more than a short period of time. Your doctor further reported a moderately decreased range of motion in your back and right leg, but again no muscle atrophy or neurological changes were reported. Medical improvement has *not* occurred because there has been no decrease in the severity of your back impairment as shown by changes in symptoms, signs, or laboratory findings.

Example 2: You were awarded disability benefits due to rheumatoid arthritis of a severity as described in Listing 1.02 of Appendix 1 of this subpart. At the time, laboratory findings were positive for this condition. Your doctor reported persistent swelling and tenderness of your fingers and wrists and that you complained of joint pain. Current medical evidence shows that while laboratory tests are still positive for rheumatoid arthritis, your impairment has responded favorably to therapy so that for

the last year your fingers and wrists have not been significantly swollen or painful. Medical improvement has occurred because there has been a decrease in the severity of your impairment as documented by the current symptoms and signs reported by your physician. Although your impairment is subject to temporary remissions and exacerbations the improvement that has occurred has been sustained long enough to permit a finding of medical improvement. We would then determine if this medical improvement is related to your ability to work.

(2) *Determining whether medical improvement is related to your ability to work.* If medical improvement has occurred and the severity of the prior impairment(s) no longer meets or equals the listing section which was used in making our most recent favorable decision, we will find that the medical improvement was related to your ability to work. We make this finding because the criteria in Appendix 1 of this subpart are related to ability to work because they reflect impairments which are considered severe enough to prevent a person from doing any gainful work. We must, of course, also establish that, considering all of your current impairments not just those which existed at the time of the most recent prior favorable medical decision, your condition does not meet or equal the requirements of Appendix 1 before we could find that your disability has ended. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.

(3) *Determining whether your impairment(s) is deemed, under Appendix 1 of this subpart, sufficient to preclude you from engaging in gainful activity.* Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases before we can find that you are no longer disabled, we must also show that your impairment(s) is no longer deemed, under Appendix 1 of this subpart, sufficient to preclude you from engaging in gainful activity. All current impairments will be considered, not just the impairment(s) present at the time of our most recent favorable determination. Sections 404.1525, 404.1526, and 404.1578 set out how we will decide whether your impairment(s) meets or equals the requirements of Appendix 1 of this subpart.

(4) *Evidence and basis for our decision.* Our decisions under this section will be made on a neutral basis without any initial inference as to the presence or absence of disability being drawn from the fact that you have previously been determined to be disabled. We will consider all evidence you submit, as well as all evidence we obtain from your treating physician(s) and other medical or nonmedical sources. What constitutes "evidence" and our procedures for obtaining it are set out in §§ 404.1512 through 404.1518. Our determination regarding whether your disability continues will be made on the basis of the weight of the evidence.

(5) *Point of comparison.* For purposes of determining whether medical improvement has occurred, we will compare the current severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time. If medical improvement has occurred, we will determine whether the medical improvement is related to your ability to do work based on this previously existing impairment(s). The most recent favorable medical decision is the lastest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final.

(c) *Determining medical improvement and its relationship to your ability to do work.* Paragraphs (b) (1) and (2) of this section discuss what we mean by medical improvement and how we determine whether medical improvement is related to your ability to work.

(1) *Medical improvement.* Medical improvement is any decrease in the medical severity of impairment(s) present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. Whether medical improvement has occurred is determined by a comparison of prior and current medical evidence which must show that there have been changes (improvement) in the symptoms, signs or laboratory findings associated with that impairment(s).

(2) *Determining whether medical improvement is related to ability to work.* If there is a decrease in medical severity as shown by the signs, symptoms and laboratory findings, we then must determine if it is related to your ability to do work, as explained in paragraph (b)(2) of this section. In determining if the medical improvement that has occurred is related to your ability to work, we will assess whether the previously existing impairments still meet or equal the level of severity contemplated by the same listing section in Appendix 1 of this subpart which was used in making our most recent favorable decision. Appendix 1 of this subpart describes impairments which, if severe enough, affect a person's ability to work. If the Appendix level of severity is met or equaled, the individual is deemed, in the absence of evidence of the contrary, to be unable to engage in gainful activity. If there has been medical improvement to the degree that the requirement of the listing section is no longer met or equaled, then the medical improvement is related to your ability to work. Unless an objective assessment shows that the listing requirement is no longer met or equaled based on actual changes shown by the medical evidence, the medical improvement that has occurred will not be considered to be related to your ability to work.

(3) *Prior file cannot be located.* If the prior file cannot be located, we will first determine whether your current impairment(s) is deemed, under Appendix 1 of this subpart, sufficient to preclude you from engaging in gainful activity. (In this way, we will be able to determine that your disability continues at the earliest time without addressing the issue of reconstructing prior evidence which can be a lengthy process.) If so, your benefits will continue unless one of the second group of exceptions applies (see paragraph (e) of this section). If not, we will determine whether an attempt should be made to reconstruct those portions of the file that were relevant to our most recent favorable medical decision (e.g., medical evidence from treating sources and the results of consultative examinations). This determination will consider the potential availability of old records in light of their age, whether the source of the evidence is still in operation, etc; and whether reconstruction efforts will yield a complete record of the basis for the most recent favorable medical decision. If relevant parts of the prior record are not reconstructed either because it is determined not to attempt reconstruction or because such efforts fail, medical improvement cannot be found. The documentation of your current impairments will provide a basis for any future reviews. If the missing file is later found, it may serve as a basis for reopening any decision under this section in accordance with the rules in § 404.988.

(4) *Impairment(s) subject to temporary remission.* In some cases the evidence shows that an individual's impairment is subject to temporary remission. In assessing whether medical improvement has occurred in persons with this type of impairment, we will be careful to consider the longitudinal history of the impairment(s), including

the occurrence of prior remissions, and prospects for future worsening of the impairment(s). Improvement in such impairments that is only temporary will not warrant a finding of medical improvement.

(5) *Applicable listing has been revised since the most recent favorable medical decision.* When determining whether any medical improvement is related to your ability to work, we use the same listing section in Appendix 1 of this subpart which was used to make our prior favorable decision. We will use the listing as it appeared at the time of the prior decision, even where the requirement(s) of the listing was subsequently changed. The current revised listing requirement will be used if we determine that you have medically improved and it is necessary to determine whether you are now considered unable to engage in gainful activity.

(d) *First group of exceptions to medical improvement.* The law provides for certain limited situations when your disability can be found to have ended even though medical improvement has not occurred, if your impairment(s) is no longer considered, under Appendix 1 of this subpart, sufficient to preclude you from engaging in gainful activity. These exceptions to medical improvement are intended to provide a way of finding that a person is no longer disabled in those limited situations where, even though there has been no decrease in severity of the impairment(s), evidence shows that the persons should no longer be considered disabled or never should have been considered disabled. If one of these exceptions applies, before we can find you are no longer disabled, we must also show that, taking all your current impairment(s) into account, not just those that existed at the time of our most recent favorable medical decision, your impairment(s) is no longer deemed, under Appendix 1 of this subpart, sufficient to preclude you from engaging in gainful activity. As part of the review process, you will be asked about any medical therapy you received or are receiving. Your answers and the evidence gathered as a result as well as all other evidence,will serve as the basis for the finding that an exception does or does not apply.

(1) *Substantial evidence shows that your are the beneficiary of advances in medical therapy or technology (related to your ability to work).* Advances in medical therapy or technology are improvements in treatment or rehabilitative methods which have favorably affected the severity of your impairment(s). We will apply this exception when substantial evidence shows that you have been the beneficiary of services which reflect these advances and they have favorably affected the severity of your impairment(s). This decision will be based on new medical evidence. In many instances, an advanced medical therapy or technology will result in a decrease in severity as shown by symptoms, signs and laboratory findings which will meet the definition of medical improvement. This exception will, therefore, see very limited application.

(2) *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable decision.* Changing methodologies and advances in medical and other diagnostic or evaluative techniques have given, and will continue to give, rise to improved methods for measuring and documenting the effect of various impairments on the ability to do work. Where, by such new or improved methods, substantial evidence shows that your impairment(s) is not as severe as was determined at the time of our most recent favorable medical decision, such evidence may serve as a basis for finding that you are no longer disabled, if your impairment(s) is no longer deemed, under Appendix 1 of this subpart, sufficient to preclude you from engaging in gainful activity. In order to be used under this exception, however, the new or improved techniques must have become generally available after the date of our most recent favorable medical decision.

(i) *How we will determine which methods are new or improved techniques and when they become generally available.* New or improved diagnostic techniques or evaluations will come to our attention by several methods. In reviewing cases, we often become aware of new techniques when their results are presented as evidence. Such techniques and evaluations are also discussed and acknowledged in medical literature by medical professional groups and other governmental entities. Through these sources, we develop listings of new techniques and when they become generally available. For example, we will consult the Health Care Financing Administration for its experience regarding when a technique is recognized for payment under Medicare and when they began paying for the technique.

(ii) *How you will know which methods are new or improved techniques and when they become generally available.* We will let you know which methods we consider to be new or improved techniques and when they become available through two vehicles.

(A) Some of the future changes in the Listing of Impairments in Appendix 1 of this subpart will be based on new or improved diagnostic or evaluative techniques. Such listing changes will clearly state this fact as they are published as Notices of Proposed Rulemaking and the new or improved technique will be considered generally available as of the date of the final publication of that particular listing in the **Federal Register.**

(B) A cumulative list since 1970 of new or improved diagnostic techniques or evaluations, how they changed the evaluation of the applicable impairment and the month and year they became generally available, will be published in the *Notices* section of the **Federal Register.** Included will be any changes in the Listing of Impairments published in the Code of Federal Regulations since 1970 which are reflective of new or improved techniques. No cases will be processed under this exception until this cumulative listing is so published. Subsequent changes to the list will be published periodically. The period will be determined by the volume of changes needed.

Example: The electrocardiographic exercise test has replaced the Master's 2-step test as a measurement of heart function since the time of your last favorable medical decision. Current evidence could show that your condition, which was previously evaluated based on the Master's 2-step test, is not now as disabling as was previously thought. If, taking all your current impairments into account, you are now able to engage in gainful activity, this exception would be used to find that you are no longer disabled even if medical improvement has not occurred.

(3) *Substantial evidence demonstrates that any prior disability decision was in error.* We will apply the exception to medical improvement based on error if substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) demonstrates that a prior determination was in error. A prior determination will be found in error only if:

(i) Substantial evidence shows on its face that the decision in question should not have been made (e.g., the evidence in your file such as pulmonary function study values was misread or an

adjudicative standard such as a listing in Appendix 1 of this subpart was misapplied).

Example: You were granted benefits when it was determined that your epilepsy met Listing 11.02. This listing calls for a finding of major motor seizures more frequently than once a month as documented by EEG evidence and by a detailed description of a typical seizure pattern. A history of either diurnal episodes or nocturnal episodes with residuals interfering with daily activities is also required. On review, it is found that a history of the frequency of your seizures showed that they occurred only once or twice a year. The prior decision would be found to be in error, and whether you were still considered to be disabled would be based on whether your current impairment(s) meets or equals the requirements of Appendix 1 of this subpart.

(ii) At the time of the prior evaluation, required and material evidence of the severity of your impairment(s) was missing. That evidence becomes available upon review, and substantial evidence demonstrates that had such evidence been present at the time of the prior determination, disability would not have been found.

(iii) Substantial evidence which is new evidence which relates to the prior determination (of allowance or continuance) refutes the conclusions that were based upon the prior evidence (e.g., a tumor thought to be malignant was later shown to have actually been benign). Substantial evidence must show that had the new evidence (which relates to the prior determination) been considered at the time of the prior decision, the claim would not have been allowed or continued. A substitution of current judgment for that used in the prior favorable decision will not be the basis for applying this exception.

Example: You were previously granted disability benefits on the basis of diabetes mellitus which the prior adjudicator believed was equivalent to the level of severity contemplated in the Listing of Impairments. The prior record shows that you had "brittle" diabetes for which you were taking insulin. Your urine was 3+ for sugar, and you alleged occasional hypoglycemic attacks caused by exertion. On review, symptoms, signs and laboratory findings are unchanged. The current adjudicator believes, however, that your impairment does not equal the severity contemplated by the listings. Error *cannot* be found because it would represent a substitution of current judgment for that of the prior adjudicator that your impairment equaled a listing.

(iv) The exception for error will not be applied retroactively under the conditions set out above unless the conditions for reopening the prior decision (see § 404.988) are met.

(4) *You are currently engaging in substantial gainful activity.* If you are currently engaging in substantial gainful activity before we determine whether you are no longer disabled because of your work activity, we will consider whether you are entitled to a trial work period as set out in § 404.1592. We will find that your disability has ended in the month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period, where it applies). This exception does not apply in determining whether you continue to have a disabling impairment(s) (§ 404.1511) for purposes of deciding your eligibility for a reentitlement period (§ 404.1592a).

(e) *Second group of exceptions to medical improvement.* In addition to the first group of exceptions to medical improvement, the following exceptions may result in a determination that you are no longer disabled. In these situations the decision will be made without a determination that you have medically improved or can engage in gainful activity.

(1) *A prior determination was fraudulently obtained.* If we find that any prior favorable determination was obtained by fraud, we may find that you are not disabled. In addition, we may reopen your claim under the rules in § 404.988.

(2) *You do not cooperate with us.* If there is a question about whether you continue to be disabled and we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail (without good cause) to do what we ask. Section 404.911 discusses how we will decide whether you have good cause for failure to cooperate. The month in which your disability ends will be the first month in which you failed to do what we asked.

(3) *We are unable to find you.* If there is a question about whether you continue to be disabled and we are unable to find you to resolve the question, we will determine that your disability has ended. The month your disability ends will be the first month in which the question arose and we could not find you.

(4) *You fail to follow prescribed treatment which would be expected to restore your ability to engage in gainful activity.* If treatment has been prescribed for you which would be expected to restore your ability to work, you must follow that treatment in order to be paid benefits. If you are not following that treatment and you do not have good cause for failing to follow that treatment, we will find that your disability has ended (see § 404.1530(c)). The month your disability ends will be the first month in which you failed to follow the prescribed treatment.

(f) *Evaluation Steps.* To assure that disability reviews are carried out in a uniform manner, that decisions of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits is made objectively, neutrally and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may stop and benefits may be *continued* at any point if we determine there is sufficient evidence to find that you are still unable to engage in gainful activity. The steps are:

(1) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended.

(2) If you are not, has there been medical improvement as defined in paragraph (b)(1) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step (3). If there has been no decrease in medical severity, there has been no medical improvement. (see step (4).)

(3) If there has been medical improvement, we must determine (in accordance with paragraph (b)(2) of this section) whether it is related to your ability to work. If medical improvement is *not* related to your ability to do work, see step (4). If medical improvement is related to your ability to do work, see step (5).

(4) If we found at step (2) that there has been no medical improvement or if we found at step (3) that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (d) and (e) of this section apply. If none of them apply, your disability will be found to continue. If one of the first group of exceptions to medical improvement (see paragraph (d) of this section) applies, we will proceed to step (5). If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.

(5) If medical improvement is related to your ability to work or if one of the first group of exceptions to medical improvement applies, we will determine (considering all your impairments) whether the requirements of Appendix 1 of this subpart are met or equaled. If your impairment(s) meets or equals the

requirements of Appendix 1 of this subpart, your disability will be found to continue. If not, your disability will be found to have ended.

(g) *The month in which we will find you are no longer disabled.* If the evidence shows that you are no longer disabled, we will find that your disability ended in the earliest of the following months—

(1) The month the evidence shows you are no longer disabled under the rules set out in this section, and you were disabled only for a specified period of time in the past;

(2) The month the evidence shows you are no longer disabled under the rules set out in this section, but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not disabled;

(3) The month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period); however, we may pay you benefits for certain months in and after the reentitlement period which follows the trial work period. (See § 404.1592 for a discussion of the trial work period, § 404.1592a for a discussion of the reentitlement period, and § 404.337 for when your benefits will end.);

(4) The month in which you return to full-time work, with no significant medical restrictions and acknowledge that medical improvement has occurred, as long as we expected your impairment(s) to improve (see § 404.1591);

(5) The first month in which you failed to do what we asked, without good cause when the rule set out in paragraph (e)(2) of this section applies;

(6) The first month in which the question of continuing disability arose and we could not find you, when the rule set out in paragraph (e)(3) of this section applies;

(7) The first month in which you failed to follow prescribed treatment without good cause, when the rule set out in paragraph (e)(4) of this section applies; or

(8) The first month you were told by your physician that you could return to work provided there is no substantial conflict between your physician's and your statements regarding your awareness of your capacity for work and the earlier date is supported by medical evidence.

(h) *Before we stop your benefits.* Before we determine you are no longer disabled, we will give you a chance to explain why we should not do so. Sections 404.1595 and 404.1597 describe your rights (including appeal rights) and the procedures we will follow.

5. In § 404.1586, paragraph (a) is revised to read as follows, a new paragraph (c) is added, and present paragraphs (c), (d), (e), and (f) are redesignated as paragraphs (d), (e), (f), and (g) respectively.

§ 404.1586 Why and when we will stop your cash benefits.

(a) *When you are not entitled to benefits.* If you become entitled to disability cash benefits as a statutorily blind person, we will find that you are no longer entitled to benefits beginning with the earliest of—

(1) The month your vision, based on current medical evidence, does not meet the definition of blindness and your disability does not continue under the rules in § 404.1594 and you were disabled only for a specified period of time in the past;

(2) The month your vision, based on current medical evidence, does not meet the definition of blindness and your disability does not continue under the rules in § 404.1594, but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not disabled;

(3) If you are under age 55, the month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period); however, we may pay you benefits for certain months in and after the reentitlement period which follows the trial work period. (See § 404.1592a for a discussion of the reentitlement period, and § 404.316 on when your benefits will end.); or

(4) If you are age 55 or older, the month (following completion of a trial work period) when your work activity shows you are able to use, in substantial gainful activity, skills and abilities comparable to those of some gainful activity which you did with some regularity and over a substantial period of time. The skills and abilities are compared to the activity you did prior to age 55 or prior to becoming blind, whichever is later.

(b) * * *

(c) *If you do not follow prescribed treatment.* If treatment has been prescribed for you that can restore your ability to work, you must follow that treatment in order to be paid benefits. If you are not following that treatment and you do not have a good reason for failing to follow that treatment (see § 404.1530(c)), we will find that your disability has ended. The month in which your disability will be found to have ended will be the first month in which you failed to follow the prescribed treatment.

* * * * *

6. Section 404.1591 is revised to read as follows:

§ 404.1591 If your medical recovery was expected and you returned to work.

If your impairment was expected to improve and you returned to full-time work with no significant medical limitations and acknowledge that medical improvement has occurred, we may find that your disability ended in the month you returned to work. Unless there is evidence showing that your disability has not ended, we will use the medical and other evidence already in your file and the fact that you returned to full-time work without significant limitations to determine that you are no longer disabled. (If your impairment is not expected to improve, we will not ordinarily review your claim until the end of the trial work period, as described in § 404.1592.)

Example: Evidence obtained during the processing of your claim showed that you had an impairment that was expected to improve about 18 months after your disability began. We, therefore, told you that your claim would be reviewed again at that time. However, before the time arrived for your scheduled medical re-examination, you told us that you had returned to work and your impairment had improved. We investigated immediately and found that, in the 16th month after your disability began, you returned to full-time work without any significant medical restrictions. Therefore, we would find that your disability ended in the first month you returned to full-time work.

7. Section 404.1592 is amended by revising paragraph (e)(2) to read as follows:

§ 404.1592 The trial work period.

* * * * *

(e) * * *

(2) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are no longer disabled (see § 404.1594).

§ 404.1593 [Amended]

8. Section 404.1593 is amended by revising the cross-reference in the last sentence to § 404.1594(e)(2).

9. Section 404.1594 is revised to read as follows:

§ 404.1594 How we will decide whether your disability continues or ends.

(a) *General.* There is a statutory requirement that, if you are entitled to disability benefits, your continued

entitlement to such benefits must be reviewed periodically. If you are entitled to disability benefits as a disabled worker or as a person disabled since childhood, there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not medically improved we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases (see paragraph (e) of this section for exceptions), we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled.

(b) *Terms and definitions.* There are several terms and definitions which are important to know in order to understand how we review whether your disability continues.

(1) *Medical improvement.* Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s) (see § 404.1528).

Example 1: You were awarded disability benefits due to a herniated nucleus pulposus. At the time of our prior decision granting you benefits you had had a laminectomy. Postoperatively, a myelogram still shows evidence of a persistent deficit in your lumbar spine. You had pain in your back, and pain and a burning sensation in your right foot and leg. There were no muscle weakness or neurological changes and a modest decrease in motion in your back and leg. When we reviewed your claim your treating physician reported that he had seen you regularly every 2 to 3 months for the past 2 years. No further myelograms had been done, complaints of pain in the back and right leg continued especially on sitting or standing for more than a short period of time. Your doctor further reported a moderately decreased range of motion in your back and right leg, but again no muscle atrophy or neurological changes were reported. Medical improvement has *not* occurred because there has been no decrease in the severity of your back impairment as shown by changes in symptoms, signs or laboratory findings.

Example 2: You were awarded disability benefits due to rheumatoid arthritis. At the time, laboratory findings were positive for this condition. Your doctor reported persistent swelling and tenderness of your fingers and wrists and that you complained of joint pain. Current medical evidence shows that while laboratory tests are still positive for rheumatoid arthritis, your impairment has responded favorably to therapy so that for the last year your fingers and wrists have not been significantly swollen or painful. Medical improvement has occurred because there has been a decrease in the severity of your impairment as documented by the current symptoms and signs reported by your physician. Although your impairment is subject to temporary remission and exacerbations, the improvement that has occurred has been sustained long enough to permit a finding of medical improvement. We would then determine if this medical improvement is related to your ability to work.

(2) *Medical improvement not related to ability to do work.* Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1) of this section, present at the time of the most recent favorable medical decision, but *no* increase in your functional capacity to do basic work activities as defined in paragraph (b)(4) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.

Example: You are 65 inches tall and weighed 246 pounds at the time your disability was established. You had venous insufficiency and persistent edema in your legs. At the time, your ability to do basic work activities was affected because you were able to sit for 6 hours, but were able to stand or walk only occasionally. At the time of our continuing disability review, you had undergone a vein stripping operation. You now weigh 220 pounds and have intermittent edema. You are still able to sit for 6 hours at a time and to stand or walk only occasionally although you report less discomfort on walking. Medical improvement has occurred because there has been a decrease in the severity of the existing impairment as shown by your weight loss and the improvement in your edema. This medical improvement is not related to your ability to work, however, because your functional capacity to do basic work activities (i.e., the ability to sit, stand and walk has not increased).

(3) *Medical improvement that is related to ability to do work.* Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1) of this section, of the impairment(s) present at the time of the most recent favorable medical decision *and* an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(4) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(5) of this section.

Example 1: You have a back impairment and had a laminectomy to relieve the nerve root impingement and weakness in your left leg. At the time of our prior decision, basic work activities were affected because you were able to stand less than 6 hours, and sit no more than ½ hour at a time. You had a successful fusion operation on your back about 1 year before our review of your entitlement. At the time of our review, the weakness in your leg has decreased. Your functional capacity to perform basic work activities now is unimpaired because you now have no limitation on your ability to sit, walk, or stand. Medical improvement has occurred because there has been a decrease in the severity of your impairment as demonstrated by the decreased weakness in your leg. This medical improvement is related to your ability to work because there has also been an increase in your functional capacity to perform basic work activities (or residual functional capacity) as shown by the absence of limitation on your ability to sit, walk, or stand. Whether or not your disability is found to have ended, however, will depend on our determination as to whether you can currently engage in substantial gainful activity.

Example 2: You were injured in an automobile accident receiving a compound fracture to your right femur and a fractured pelvis. When you applied for disability benefits 10 months after the accident your doctor reported that neither fracture had yet achieved solid union based on his clinical examination. X-rays supported this finding. Your doctor estimated that solid union and a subsequent return to full weight bearing would not occur for at least 3 more months. At the time of our review 6 months later, solid union had occurred and you had been returned to full weight-bearing for over a month. Your doctor reported this and the fact that your prior fractures no longer placed any limitation on your ability to walk, stand, lift, etc., and, that in fact, you could return to fulltime work if you so desired.

Medical improvement had occurred because there has been a decrease in the severity of your impairments as shown by X-ray and clinical evidence of solid union and your return to full weight-bearing. This medical improvement is related to your ability to work because you no longer meet the same listed impairment in Appendix 1 of this subpart (see paragraph (c)(3)(i) of this section). In fact, you no longer have an impairment which is severe (see § 404.1521) and your disability will be found to have ended.

(4) *Functional capacity to do basic work activities.* Under the law, disability is defined, in part, as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment(s). In determining whether you are disabled under the law, we must measure, therefore, how and to what extent your impairment(s) has affected your ability to do work. We do this by looking at how your functional capacity for doing basic work activities has been affected. Basic work activities means the abilities and aptitudes necessary to do most jobs. Included are exertional abilities such as walking, standing, pushing, pulling, reaching and carrying, and nonexertional abilities and aptitudes such as seeing, hearing, speaking, remembering, using judgment, dealing with changes and dealing with both supervisors and fellow workers. A person who had no impairment(s) would be able to do all basic work activities at normal levels; he or she would have an unlimited functional capacity to do basic work activities. Depending on its nature and severity, an impairment will result in some limitation to the functional capacity to do one or more of these work activities. Diabetes, for example, can result in circulatory problems which could limit the length of time a person could stand or walk and damage to his or her eyes as well, so that the person also had limited vision. What a person can still do despite an impairment, is called his or her residual functional capacity. How the residual functional capacity is assessed is discussed in more detail in § 404.1545. Unless an impairment is so severe that it is deemed to prevent you from doing substantial gainful activity (see §§ 404.1525 and 404.1526), it is this residual functional capacity that is used to determine whether you can still do your past work or, in conjunction with your age, education and work experience, any other work.

(i) A decrease in the severity of an impairment as measured by changes (improvement) in symptoms, signs or laboratory findings can, if great enough, result in an increase in the functional capacity to do work activities. Vascular surgery (e.g., femoropopliteal bypass) may sometimes reduce the severity of the circulatory complications of diabetes so that better circulation results and the person can stand or walk for longer periods. When new evidence showing a change in signs, symptoms and laboratory findings establishes that both medical improvement has occurred and your functional capacity to perform basic work activities, or residual functional capacity, has increased, we say that medical improvement which is related to your ability to do work has occurred. A residual functional capacity assessment is also used to determine whether you can engage in substantial gainful activity and, thus, whether you continue to be disabled (see paragraph (b)(5) of this section).

(ii) Many impairment-related factors must be considered in assessing your functional capacity for basic work activities. Age in one key factor. Medical literature shows that there is a gradual decrease in organs function with age; that major losses and deficits become irreversible over time and that maximum exercise performance diminishes with age. Other changes related to sustained to sustained periods of inactivity and the aging process include muscle atrophy, degenerative joint changes, decrease in range of motion, and changes in the cardiac and respiratory systems which limit the exertional range.

(iii) Studies have also shown that the longer an individual is away from the workplace and is inactive, the more difficult it becomes to return to ongoing gainful employment. In addition, a gradual change occurs in most jobs so that after about 15 years, it is no longer realistic to expect that skills and abilities acquired in these jobs will continue to apply to the current workplace. Thus, if you are age 50 or over and have been receiving disability benefits for a considerable period of time, we will consider this factor along with your age in assessing your residual functional capacity. This will ensure that the disadvantages resulting from inactivity and the aging process during a long period of disability will be considered. In some instances where available evidence does not resolve what you can or cannot do on a sustained basis, we will provide special work evaluations or other appropriate testing.

(5) *Ability to engage in substantial gainful activity.* In most instances, we must show that you are able to engage in substantial gainful activity before your benefits are stopped. When doing this, we will consider all your current impairments not just that impairment(s) present at the time of the most recent favorable determination. If we cannot determine that you are still disabled based on medical considerations alone (as discussed in §§ 404.1525 and 404.1526), we will use the new symptoms, signs and laboratory findings to make an objective assessment of your functional capacity to do basic work activities or residual functional capacity and we will consider your vocational factors. See §§ 404.1545 through 404.1569.

(6) *Evidence and basis for our decision.* Our decisions under this section will be made on a neutral basis without any initial inference as to the presence or absence of disability being drawn from the fact that you have previously been determined to be disabled. We will consider all evidence you submit, as well as all evidence we obtain from your treating physician(s) and other medical or nonmedical sources. What constitutes "evidence" and our procedures for obtaining it are set out in §§ 404.1512 through 404.1518. Our determination regarding whether your disability continues will be made on the basis of the weight of the evidence.

(7) *Point of comparison.* For purposes of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time. If medical improvement has occurred, we will compare your current functional capacity to do basic work activities (i.e. your residual functional capacity) based on this previously existing impairment(s) with your prior residual functional capacity in order to determine whether the medical improvement is related to your ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final.

(c) *Determining medical improvement and its relationship to your abilities to do work.* Paragraphs (b) (1) through (3) of this section discuss what we mean by medical improvement, medical improvement not related to your ability to work and medical improvement that is related to your ability to work. How we will arrive at the decision that medical improvement has occurred and its relationship to the ability to do work, is discussed below.

(1) *Medical improvement.* Medical improvement is any decrease in the medical severity of impairment(s) present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled and is determined by a comparison of prior and current medical evidence which must show that there have been changes (improvement) in the

symptoms, signs or laboratory findings associated with that impairment(s).

(2) *Determining if medical improvement is related to ability to work.* If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, we then must determine if it is related to your ability to do work. In paragraph (b)(4) of this section, we explain the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect your residual functional capacity. In determining whether medical improvement that has occurred is related to your ability to do work, we will assess your residual functional capacity (in accordance with paragraph (b)(4) of this section) based on the current severity of the impairment(s) which was present at your last favorable medical decision. Your new residual functional capacity will then be compared to your residual functional capacity at the time of our most recent favorable medical decision. Unless an increase in the current residual functional capacity is based on changes in the signs, symptoms, or laboratory findings, any medical improvement that has occurred will not be considered to be related to your ability to do work.

(3) Following are some additional factors and consideration which we will apply in making these determinations.

(i) *Previous impairment met or equaled listings.* If our most recent favorable decision was based on the fact that your impairment(s) at the time met or equaled the severity contemplated by the Listing of Impairments in Appendix 1 of this subpart, an assessment of your residual functional capacity would not have been made. If medical improvement has occurred and the severity of the prior impairment(s) no longer meets or equals the same listing section used to make our most recent favorable decision, we will find that the medical improvement was related to your ability to work. Appendix 1 of this subpart describes impairments which, if severe enough, affect a person's ability to work. If the appendix level of severity is met or equaled, the individual is deemed, in the absence of evidence to the contrary, to be unable to engage in substantial gainful activity. If there has been medical improvement to the degree that the requirement of the listing section is no longer met or equaled, then the medical improvement is related to your ability to work. We must, of course, also establish that you can currently engage in gainful activity before finding that your disability has ended.

(ii) *Prior residual functional capacity assessment made.* The residual functional capacity assessment used in making the most recent favorable medical decision will be compared to the residual functional capacity assessment based on current evidence in order to determine if your functional capacity for basic work activities has increased. There will be no attempt made to reassess the prior residual functional capacity.

(iii) *Prior residual functional capacity assessment should have been made, but was not.* If the most recent favorable medical decision should have contained an assessment of your residual functional capacity (i.e., your impairments did not meet or equal the level of severity contemplated by the Listing of Impairments in Appendix 1 of this subpart) but does not, either because this assessment is missing from your file or because it was not done, we will reconstruct the residual functional capacity. This reconstructed residual functional capacity will accurately and objectively assess your functional capacity to do basic work activities. We will assign the maximum functional capacity consistent with an allowance.

Example: You were previously found to be disabled on the basis that "while your impairment did not meet or equal a listing, it did prevent you from doing your past or any other work." The prior adjudicator did not, however, include a residual functional capacity assessment in the rationale of this decision and a review of the prior evidence does not show that such an assessment was ever made. If a decrease in medical severity, i.e., medical improvement, has occurred, the residual functional capacity based on the current level of severity of your impairment will have to be compared with your residual functional capacity based on its prior severity in order to determine if the medical improvement is related to your ability to do work. In order to make this comparison, we will review the prior evidence and make an objective assessment of your residual functional capacity at the time of our most recent favorable medical determination, based on the symptoms, signs and laboratory findings as they then existed.

(iv) *Impairment subject to temporary remission.* In some cases the evidence shows that an individual's impairments are subject to temporary remission. In assessing whether medical improvement has occurred in persons with this type of impairment, we will be careful to consider the longitudinal history of the impairments, including the occurrence of prior remission, and prospects for future worsenings. Improvement in such impairments that is only temporary will not warrant a finding of medical improvement.

(v) *Prior file cannot be located.* If the prior file cannot be located, we will first determine whether you are able to now engage in substantial gainful activity based on all your current impairments. (In this way, we will be able to determine that your disability continues at the earliest point without addressing the often lengthy process of reconstructing prior evidence.) If you cannot engage in substantial gainful activity currently, your benefits will continue unless one of the second group of exceptions applies (see paragraph (e) of this section). If you are able to engage in substantial gainful activity, we will determine whether an attempt should be made to reconstruct those portions of the missing file that were relevant to our most recent favorable medical decision (e.g., work history, medical evidence from treating sources and the results of consultative examinations). This determination will consider the potential availability of old records in light of their age, whether the source of the evidence is still in operation; and whether reconstruction effects will yield a complete record of the basis for the most recent favorable medical decision. If relevant parts of the prior record are not reconstructed either because it is determined not to attempt reconstruction or because such efforts fail, medical improvement cannot be found. The documentation of your current impairments will provide a basis for any future reviews. If the missing file is later found, it may serve as a basis for reopening any decision under this section in accordance with the rules in § 404.988.

(d) *First group of exceptions to medical improvement.* The law provides for certain limited situations when your disability can be found to have ended even though medical improvement has not occurred, if you can engage in substantial gainful activity. These exceptions to medical improvement are intended to provide a way of finding that a person is no longer disabled in those limited situations where, even though there has been no decrease in severity of the impairment(s), evidence shows that the person should no longer be considered disabled or never should have been considered disabled. If one of these exceptions applies, we must also show that, taking all your current impairment(s) into account, not just those that existed at the time of our most recent favorable medical decision, you are now able to engage in substantial gainful activity before your disability can be found to have ended.

As part of the review process, you will be asked about any medical or vocational therapy you received or are receiving. Your answers and the evidence gathered as a result as well as all other evidence, will serve as the basis for the finding that an exception applies.

(1) *Substantial evidence shows that you are the beneficiary of advances in medical or vocational therapy or technology (related to your ability to work).* Advances in medical or vocational therapy or technology are improvements in treatment or rehabilitative methods which have increased your ability to do basic work activities. We will apply this exception when substantial evidence shows that you have been the beneficiary of services which reflect these advances and they have favorably affected the severity of your impairment or your ability to do basic work activities. This decision will be based on new medical evidence and a new residual functional capacity assessment. (See § 404.1545.) In many instances, an advanced medical therapy or technology will result in a decrease in severity as shown by symptoms, signs and laboratory findings which will meet the definition of medical improvement. This exception will, therefore, see very limited application.

(2) *Substantial evidence shows that you have undergone vocational therapy (related to your ability to work).* Vocational therapy (related to your ability to work) may include, but is not limited to, additional education, training, or work experience that improves your ability to meet the vocational requirements of more jobs. This decision will be based on substantial evidence which includes new medical evidence and a new residual functional capacity assessment. (See § 404.1545.) If, at the time of our review you have not completed vocational therapy which could affect the continuance of your disability, we will review your claim upon completion of the therapy.

Example 1: You were found to be disabled because the limitations imposed on you by your impairment allowed you to only do work that was at a sedentary level of exertion. Your prior work experience was work that required a medium level of exertion. Your age and education at the time would not have qualified you for work that was below this medium level of exertion. You enrolled in and completed a specialized training course which qualifies you for a job in data processing as a computer programmer in the period since you were awarded benefits. On review of your claim, current evidence shows that there is no medical improvement and that you can still do only sedentary work. As the work of a computer programmer is sedentary in nature, you are now able to engage in substantial gainful activity when your new skills are considered.

Example 2: You were previously entitled to benefits because the medical evidence and assessment of your residual functional capacity showed you could only do light work. Your prior work was considered to be heavy in nature and your age, education and the nature of your prior work qualified you for work which was no less than medium in exertion. The current evidence and residual functional capacity show there has been no medical improvement and that you can still do only light work. Since you were originally entitled to benefits, your vocational rehabilitation agency enrolled you in and you successfully completed a trade school course so that you are now qualified to do small appliance repair. This work is light in nature, so when your new skills are considered, you are now able to enegage in substantial gainful activity even though there has been no change in your residual functional capacity.

(3) *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable decision.* Changing methodologies and advances in medical and other diagnostic or evaluative techniques have given, and will continue to give, rise to improved methods for measuring and documenting the effect of various impairments on the ability to do work. Where, by such new or improved methods, substantial evidence shows that your impairment(s) is not as severe as was determined at the time of our most recent favorable medical decision, such evidence may serve as a basis for finding that you are no longer disabled, if you can currently engage in substantial gainful activity. In order to be used under this exception, however, the new or improved techniques must have become generally available after the date of our most recent favorable medical decision.

(i) *How we will determine which methods are new or improved techniques and when they become generally available.* New or improved diagnostic techniques or evaluations will come to our attention by several methods. In reviewing cases, we often become aware of new techniques when their results are presented as evidence. Such techniques and evaluations are also discussed and acknowledged in medical literature by medical professional groups and other governmental entities. Through these sources, we develop listings of new techniques and when they become generally available. For example, we will consult the Health Care Financing Administration for its experience regarding when a technique is recognized for payment under Medicare and when they began paying for the technique.

(ii) *How you will know which methods are new or improved techniques and when they become generally available.* We will let you know which methods we consider to be new or improved techniques and when they become available through two vehicles.

(A) Some of the future changes in the Listing of Impairments in Appendix 1 of this subpart will be based on new or improved diagnostic or evaluative techniques. Such listings changes will clearly state this fact as they are published as Notices of Proposed Rulemaking and the new or improved technique will be considered generally available as of the date of the final publication of that particular listing in the **Federal Register.**

(B) A cumulative list since 1970 of new or improved diagnostic techniques or evaluations, how they changed the evaluation of the applicable impairment and the month and year they became generally available, will be published in the *Notices* section of the **Federal Register.** Included will be any changes in the Listing of Impairments published in the Code of Federal Regulations since 1970 which are reflective of new or improved techniques. No cases will be processed under this exception until this cumulative listing is so published. Subsequent changes to the list will be published periodically. The period will be determined by the volume of changes needed.

Example: The electrocardiographic exercise test has replaced the Master's 2-step test as a measurement of heart function since the time of your last favorable medical decision. Current evidence could show that your condition, which was previously evaluated based on the Master's 2-step test, is not now as disabling as was previously thought. If, taking all your current impairments into account, you are now able to engage in substantial gainful activity, this exception would be used to find that you are no longer disabled even if medical improvement has not occurred.

(4) *Substantial evidence demonstrates that any prior disability decision was in error.* We will apply the exception to medical improvement based on error if substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) demonstrates that a prior determination

was in error. A prior determination will be found in error only if:

(i) Substantial evidence shows on its face that the decision in question should not have been made (e.g., the evidence in your file such as pulmonary function study values was misread or an adjudicative standard such as a listing in Appendix 1 or a medical/vocational rule in Appendix 2 of this subpart was misapplied).

Example 1: You were granted benefits when it was determined that your epilepsy met Listing 11.02. This listing calls for a finding of major motor seizures more frequently than once a month as documented by EEG evidence and by a detailed description of a typical seizure pattern. A history of either diurnal episodes or nocturnal episodes with residuals interfering with daily activities is also required. On review, it is found that a history of the frequency of your seizures showed that they occurred only once or twice a year. The prior decision would be found to be in error, and whether you were still considered to be disabled would be based on whether you could currently engage in substantial gainful activity.

Example 2: Your prior award of benefits was based on vocational rule 201.12 in Appendix 2 of this subpart. This rule applies to a person age 50–54 who has at least a high school education, whose previous work was entirely at a semiskilled level, and who can do only sedentary work. On review, it is found that at the time of the prior determination you were actually only age 46 and vocational rule 201.21 should have been used. This rule would have called for a denial of your claim and the prior decision is found to have been in error. Continuation of your disability would depend on a finding of your current ability to engage in substantial gainful activity.

(ii) At the time of the prior evaluation, required and material evidence of the severity of your impairment(s) was missing. That evidence becomes available upon review, and substantial evidence demonstrates that had such evidence been present at the time of the prior determination, disability would not have been found.

Example: You were found disabled on the basis of chronic obstructive pulmonary disease. The severity of your impairment was documented primarily by pulmonary function testing results. The evidence showed that you could do only light work. Spirometric tracings of this testing, although required, were not obtained, however. On review, the original report is resubmitted by the consultative examining physician along with the corresponding spirometric tracings. A review of the tracings shows that the test was invalid. Current pulmonary function testing supported by spirometric tracings reveals that your impairment does not limit your ability to perform basic work activities in any way. Error is found based on the fact that required, material evidence which was originally missing now becomes available and shows that if it had been available at the time of the prior determination, disability would not have been found.

(iii) Substantial evidence which is new evidence which relates to the prior determination (of allowance or continuance) refutes the conclusions that were based upon the prior evidence (e.g., a tumor thought to be malignant was later shown to have actually been benign). Substantial evidence must show that had the new evidence (which relates to the prior determination) been considered at the time of the prior decision, the claim would not have been allowed or continued. A substitution of current judgment for that used in the prior favorable decision will not be the basis for applying this exception.

Example: You were previously found entitled to benefits on the basis of diabetes mellitus which the prior adjudicator believed was equivalent to the level of severity contemplated in the Listing of Impairments. The prior record shows that you had "brittle" diabetes for which you were taking insulin. Your urine was 3+ for sugar, and you alleged occasional hypoglycemic attacks caused by exertion. On review, symptoms, signs and laboratory findings are unchanged. The current adjudicator feels, however, that your impairment clearly does not equal the severity contemplated by the listings. Error *cannot* be found because it would represent a substitution of current judgment for that of the prior adjudicator that your impairment equaled a listing.

(iv) The exception for error will not be applied retroactively under the conditions set out above unless the conditions for reopening the prior decision (see § 404.988) are met.

(5) *You are currently engaging in substantial gainful activity.* If you are currently engaging in substantial gainful activity before we determine whether you are no longer disabled because of your work activity, we will consider whether you are entitled to a trial work period as set out in § 404.1592. We will find that your disability has ended in the month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period, where it applies). This exception does not apply in determining whether you continue to have a disabling impairment(s) (§ 404.1511) for purposes of deciding your eligibility for a reentitlement period (§ 404.1592a).

(e) *Second group of exceptions to medical improvement.* In addition to the first group of exceptions to medical improvement, the following exceptions may result in a determination that you are no longer disabled.

In these situations the decision will be made without a determination that you have medically improved or can engage in substantial gainful activity.

(1) *A prior determination was fraudulently obtained.* If we find that any prior favorable determination was obtained by fraud, we may find that you are not disabled. In addition, we may reopen your claim under the rules in § 404.988.

(2) *You do not cooperate with us.* If there is a question about whether you continue to be disabled and we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail (without good cause) to do what we ask. Section 404.911 discusses how we will decide whether you have good cause for failure to cooperate. The month in which your disability ends will be the first month in which you failed to do what we asked.

(3) *We are unable to find you.* If there is a question about whether you continue to be disabled and we are unable to find you to resolve the question, we will determine that your disability has ended. The month your disability ends will be the first month in which the question arose and we could not find you.

(4) *You fail to follow prescribed treatment which would be expected to restore your ability to engage in substantial gainful activity.* If treatment has been prescribed for you which would be expected to restore your ability to work, you must follow that treatment in order to be paid benefits. If you are not following that treatment and you do not have good cause for failing to follow that treatment, we will find that your disability has ended (see § 404.1530(c)). The month your disability ends will be the first month in which you failed to follow the prescribed treatment.

(f) *Evaluation steps.* To assure that disability reviews are carried out in a uniform manner, that decisions of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be *continued* at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. The steps are:

(1) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to

have ended (see paragraph (d)(5) of this section).

(2) If you are not, do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in Appendix 1 of this subpart? If you do, your disability will be found to continue.

(3) If you do not, has there been medical improvement as defined in paragraph (b)(1) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step (4). If there has been no decrease in medical severity, there has been no medical improvement. (See step (5).)

(4) If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)–(4) of this section; i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to your ability to do work, see step (5). If medical improvement *is* related to your ability to do work, see step (6).

(5) If we found at step (3) that there has been no medical improvement or if we found at step (4) that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (d) and (e) of this section apply. If none of them apply, your disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step (6). If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.

(6) If medical improvement is shown to be related to your ability to do work or if one of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see § 404.1521). This determination will consider all your current impairments and the impact of the combination of those impairments on your ability to function. If the residual functional capacity assessment in step (4) above shows significant limitation of your ability to do basic work activities, see step (7). When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered to be disabled.

(7) If your impairment(s) is severe, we will assess your current ability to engage in substantial gainful activity in accordance with §§ 404.1560 through 404.1569. That is we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, disability will be found to have ended.

(8) If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue.

(g) *The month in which we will find you are no longer disabled.* If the evidence shows that you are no longer disabled, we will find that your disability ended in the earliest of the following months.

(1) The month the evidence shows you are no longer disabled under the rules set out in this section, and you were disabled only for a specified period of time in the past;

(2) The month the evidence shows you are no longer disabled under the rules set out in this section, but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not disabled;

(3) The month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period); however, we may pay you benefits for certain months in and after the reentitlement period which follows the trial work period. (See § 404.1592a for a discussion of the reentitlement period. If you are receiving benefits on your own earnings record, see § 404.316 for when your benefits will end. See § 404.352 if you are receiving benefits on a parent's earnings as a disabled adult child.);

(4) The month in which you actually do substantial gainful activity (where you are not entitled to a trial work period);

(5) The month in which you return to full-time work, with no significant medical restrictions and acknowledge that medical improvement has occurred, and we expected your impairment(s) to improve (see § 404.1591);

(6) The first month in which you failed without good cause to do what we asked, when the rule set out in paragraph (e)(2) of this section applies;

(7) The first month in which the question of continuing disability arose and we could not find you, when the rule set out in paragraph (e)(3) of this section applies;

(8) The first month in which you failed without good cause to follow prescribed treatment, when the rule set out in paragraph (e)(4) of this section applies; or

(9) The first month you were told by your physician that you could return to work provided there is no substantial conflict between your physician's and your statements regarding your awareness of your capacity for work and the earlier date is supported by the medical evidence.

(h) *Before we stop your benefits.* Before we stop your benefits or a period of disability, we will give you a chance to explain why we should not do so. Sections 404.1595 and 404.1597 describe your rights (including appeal rights) and the procedures we will follow.

10. Section 404.1598 is revised to read as follows:

§ 404.1598 If you become disabled by another impairment(s).

If a new severe impairment(s) begins in or before the month in which your last impairment(s) ends, we will find that your disability is continuing. The new impairment(s) need not be expected to last 12 months or to result in death, but it must be severe enough to keep you from doing substantial gainful activity, or severe enough so that you are still disabled under § 404.1594.

PART 416—[AMENDED]

Part 416 of Chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart I of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1614, and 1631 of the Social Security Act, as amended; 42 U.S.C. 1302, 1382, and 1383; secs. 2 and 5 of Pub. L. 98–460, 42 U.S.C. 421 and 423.

2. Section 416.901 is amended by revising paragraphs (d) and (l) to read as follows:

§ 416.901 Scope of subpart.

* * * * *

(d) Our general rules on evaluating disability if you are filing a new application are stated in §§ 416.920 through 416.923. We describe the steps that we go through and the order in which they are considered.

* * * * *

(l) Our rules on when disability or blindness continues and stops are contained in §§ 416.986 and 416.988 through 416.998. We explain what your responsibilities are in telling us of any

events that may cause a change in your disability or blindness status, when you may have a trial work period, and when we will review to see if you are still disabled. We also explain how we consider the issue of medical improvement (and the exceptions to medical improvement) in determining whether you are still disabled.

3. Section 416.911 is revised to read as follows:

§ 416.911 Definition of disabling impairment.

A disabling impairment is an impairment (or combination of impairments) which, of itself, is so severe that it meets or equals a set of criteria in the Listing of Impairments in Appendix 1 of Subpart P of Part 404 of this chapter or which, when considered with your age, education and work experience, would result in a finding that you are disabled under § 416.994. In determining whether you have a disabling impairment, earnings are not considered.

4. In § 416.986, paragraphs (a) and (b) are revised to read as following:

§ 416.986 Why and when we will find that you are no longer entitled to benefits based on statutory blindness.

(a) *If you vision does not meet the definition of blindness.* If yor become entitled to payments as a statutorily blind person and your statutory blindness ends, your eligibility for payments generally will end 2 months after your blindness ends. We will find that your statutory blindness has ended beginning with the earliest of the following months—

(1) The month your vision, based on current medical evidence, does not meet the definition of blindness and you were disabled only for a specified period of time in the past;

(2) The month your vision based on current medical evidence, does no meet the definition of blindness, but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not now blind; or

(3) The first month in which you fail to follow prescribed treatment that can restore your ability to work (see § 416.930).

(b) *If you were found blind as defined in a State plan.* If you become eligible for payments because you were blind as defined in a State plan, we will find that your blindness has ended beginning with the first month in which your vision, as shown by medical or other evidence, does not meet the criteria of the appropriate State plan or the first month in which your vision does not meet the definition of statutory blindness (§ 416.981), whichever is later, and in neither event earlier than the month in which we mail you a notice saying that we have determined that you are not now blind under a State plan or not now statutorily blind, as appropriate.

* * * * *

5. Section 416.991 is revised to read as follows:

§ 416.991 If your medical recovery was expected and you returned to work.

If your impairment was expected to improve and you returned to full-time work with no significant medical limitations and acknowledge that medical improvement has occurred, we may find that your disability ended in the month you returned to work. Unless there is evidence showing that your disability has not ended, we will use the medical and other evidence already in your file and the fact that you returned to full-time work without significant limitations to determine that you are no longer disabled. (If your impairment is not expected to improve, we will not ordinarily review your claim until the end of the trial work period, as described in § 416.992).

Example: Evidence obtained during the processing of your claim showed that you had an impairment that was expected to improve about 18 months after your disability began. We, therefore, told you that your claim would be reviewed again at that time. However, before the time arrived for your scheduled medical re-examination, you told us that you had returned to work and your impairment had improved. We reviewed your claim immediately and found that, in the 16th month after your disability began, you returned to full-time work without any significant medical restrictions. Therefore, we would find that your disability ended in the first month you returned to full-time work.

6. Section 416.992 is amended by revising paragraph (e)(2) to read as follows:

§ 416.992 The trial work period.

* * * * *

(e) * * *

(2) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are no longer disabled (see § 416.994).

§ 416.993 [Amended]

7. Section 416.993 is amended by revising the cross-reference in the last sentence to §§ 416.994(b)(4)(ii) and 416.994(c)(4)(ii).

8. Section 416.994 is revised to read as follows:

§ 416.994 How we will decide whether your disability continues or ends.

(a) *General.* There is a statutory requirement that, if you are entitled to disability benefits, your continued entitlement to such benefits must be reviewed periodically. In deciding whether your disability continues, different rules apply depending on whether you are an adult or a child (under age 18). Additional rules apply if you were found disabled under a State plan. All these rules are explained in paragraphs (b), (c), and (d) of this section.

(b) *Disabled persons age 18 or over (adults).* If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, (see paragraph (b)(4) of this section for exceptions) we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled.

(1) *Terms and definitions.* There are several terms and definitions which are important to know in order to understand how we review whether your disability continues.

(i) *Medical improvement.* Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s) (see § 416.928).

Example 1: You were awarded disability benefits due to a herniated nucleus pulposus. At the time of our prior decision granting you benefits you had had a laminectomy. Postoperatively, a myelogram still shows

evidence of a persistent deficit in your lumbar spine. You had pain in your back, and pain and a burning sensation in your right foot and leg. There were no muscle weakness or neurological changes and a modest decrease in motion in your back and leg. When we reviewed your claim your treating physician reported that he had seen you regularly every 2 to 3 months for the past 2 years. No further myelograms had been done, complaints of pain in the back and right leg continued especially on sitting or standing for more than a short period of time. Your doctor further reported a moderately decreased range of motion in your back and right leg, but again no muscle atrophy or neurological changes were reported. Medical improvement has *not* occurred because there has been no decrease in the severity of your back impairment as shown by changes in symptoms, signs or laboratory findings.

Example 2: You were awarded disability benefits due to rheumatoid arthritis. At the time, laboratory findings were positive for this condition. Your doctor reported persistent swelling and tenderness of your fingers and wrists and that you complained of joint pain. Current medical evidence shows that while laboratory tests are still positive for rheumatoid arthritis, your impairment has responded favorably to therapy so that for the last year your fingers and wrists have not been significantly swollen or painful. Medical improvement has occurred because there has been a decrease in the severity of your impairment as documented by the current symptoms and signs reported by your physician. Although your impairment is subject to temporary remissions and exacerbations, the improvement that has occurred has been sustained long enough to permit a finding of medical improvement. We would then determine if this medical improvement is related to your ability and work.

(ii) *Medical improvement not related to ability to do work.* Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but *no* increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.

Example: You are 65 inches tall and weighed 246 pounds at the time your disability was established. You had venous insufficiency and persistent edema in your legs. At the time, your ability to do basic work activities was affected because you were able to sit for 6 hours, but were able to stand or walk only occasionally. At the time of our continuing disability review, you had undergone a vein stripping operation. You now weigh 220 pounds and have intermittent edema. You are still able to sit for 6 hours at a time and to stand or work only occasionally although you report less discomfort on walking. Medical improvement has occurred because there has been a decrease in the severity of the existing impairment as shown by your weight loss and the improvement in your edema. This medical improvement is not related to your ability to work, however, because your functional capacity to do basic work activities (i.e., the ability to sit, stand and walk has not increased).

(iii) *Medical improvement that is related to ability to do work.* Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision *and* an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.

Example 1: You have a back impairment and had a laminectomy to relieve the nerve root impingement and weakness in your left leg. At the time of our prior decision, basic work activities were affected because you were able to stand less than 6 hours, and sit no more than ½ hour at a time. You had a successful fusion operation on your back about 1 year before our review of your entitlement. At the time of our review, the weakness in your leg has decreased. Your functional capacity to perform basic work activities now is unimpaired because you now have no limitation on your ability to sit, walk, or stand. Medical improvement has occurred because there has been a decrease in the severity of your impairment as demonstrated by the decreased weakness in your leg. This medical improvement is related to your ability to work because there has also been an increase in your functional capacity to perform basic work activities (or residual functional capacity) as shown by the absence of limitation on your ability to sit, walk, or stand. Whether or not your disability is found to have ended, however, will depend on our determination as to whether you can currently engage in substantial gainful activity.

Example 2: You were injured in an automobile accident receiving a compound fracture to your right femur and a fractured pelvis. When you applied for disability benefits 10 months after the accident your doctor reported that neither fracture had yet achieved solid union based on his clinical examination. X-rays supported this finding. Your doctor estimated that solid union and a subsequent return to full weight bearing would not occur for at least 3 more months. At the time of our review 6 months later, solid union had occurred and you had been returned to weight-bearing for over a month. Your doctor reported this and the fact that your prior fractures no longer placed any limitation on your ability to walk, stand, lift, etc., and, that in fact, you could return to fulltime work if you so desired.

Medical improvement has occurred because there has been a decrease in the severity of your impairments as shown by X-ray and clinical evidence of solid union and your return to full weight-bearing. This medical improvement is related to your ability to work because you no longer meet the same listed impairment in Appendix 1 of Subpart P of Part 404 of this chapter (see paragraph (b)(2)(iii)(A) of this section). In fact, you no longer have an impairment which is severe (see § 416.921) and your disability will be found to have ended.

(iv) *Functional capacity to do basic work activities.* Under the law, disability is defined, in part, as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment(s). In determining whether you are disabled under the law, we must measure, therefore, how and to what extent your impairment(s) has affected your ability to do work. We do this by looking at how your functional capacity for doing basic work activities has been affected. Basic work activities means the abilities and aptitudes necessary to do most jobs. Included are exertional abilities such as walking, standing, pushing, pulling, reaching and carrying, and nonexertional abilities and aptitudes such as seeing, hearing, speaking, remembering, using judgment, dealing with changes and dealing with both supervisors and fellow workers. A person who has no impairment(s) would be able to do all basic work activities at normal levels; he or she would have an unlimited functional capacity to do basic work activities. Depending on its nature and severity, an impairment will result in some limitation to the functional capacity to do one or more of these basic work activities. Diabetes, for example, can result in circulatory problems which could limit the length of time a person could stand or walk and damage to his or her eyes as well, so that the person also had limited vision. What a person can still do despite an impairment, is called his or her residual functional capacity. How the residual functional capacity is assessed is discussed in more detail in § 416.945. Unless an impairment is so severe that it is deemed to prevent you from doing substantial gainful activity (see §§ 416.925 and 416.926) it is this residual functional capacity that is used to determine whether you can still do your past work or, in conjunction with your

age, education and work experience, any other work.

(A) A decrease in the severity of an impairment as measured by changes (improvement) in symptoms, signs or laboratory findings can, if great enough, result in an increase in the functional capacity to do work activities. Vascular surgery (e.g., femoropopliteal bypass) may sometimes reduce the severity of the circulatory complications of diabetes so that better circulation results and the person can stand or walk for longer periods. When new evidence showing a change in symptoms, signs and laboratory findings establishes that both medical improvement has occurred and your functional capacity to perform basic work activities, or residual functional capacity, has increased, we say that medical improvement which is related to your ability to do work has occurred. A residual functional capacity assessment is also used to determine whether you can engage in substantial gainful activity and, thus, whether you continue to be disabled (see paragraph (b)(1)(vi) of this section).

(B) Many impairment-related factors must be considered in assessing your functional capacity for basic work activities. Age is one key factor. Medical literature shows that there is a gradual decrease in organ function with age; that major losses and deficits become irreversible over time and that maximum exercise performance diminishes with age. Other changes related to sustained periods of inactivity and the aging process include muscle atrophy, degenerative joint changes, decrease in range of motion, and changes in the cardiac and respiratory systems which limit the exertional range.

(C) Studies have also shown that the longer an individual is away from the workplace and is inactive, the more difficult it becomes to return to ongoing gainful employment. In addition, a gradual change occurs in most jobs so that after about 15 years, it is no longer realistic to expect that skills and abilities acquired in these jobs will continue to apply to the current workplace. Thus, if you are age 50 or over and have been receiving disability benefits for a considerable period of time, we will consider this factor along with your age in assessing your residual functional capacity. This will ensure that the disadvantages resulting from inactivity and the aging process during a long period of disability will be considered. In some instances where available evidence does not resolve what you can or cannot do on a sustained basis, we will provide special work evaluation or other appropriate testing.

(v) *Ability to engage in substantial gainful activity.* In most instances, we must show that you are able to engage in substantial gainful activity before your benefits are stopped. When doing this, we will consider all your current impairments not just that impairment(s) present at the time of the most recent favorable determination. If we cannot determine that you are still disabled based on medical consideration alone (as discussed in §§ 416.925 and 416.926), we will use the new symptoms, signs and laboratory findings to make an objective assessment of your functional capacity to do basic work activities or residual functional capacity and we will consider your vocational factors. See §§ 416.945 through 416.969.

(vi) *Evidence and basis for our decision.* Our decisions under this section will be made on a neutral basis without any initial inference as to the presence or absence of disability being drawn from the fact that you have previously been determined to be disabled. We will consider all evidence you submit, as well as all evidence we obtain from your treating physician(s) and other medical or nonmedical sources. What constitutes "evidence" and our procedures for obtaining it are set out in §§ 416.912 through 416.918. Our determination regarding whether your disability continues will be made on the basis of the weight of the evidence.

(vii) *Point of comparison.* For purpose of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time. If medical improvement has occurred, we will compare your current functional capacity to do basic work activities (i.e., your residual functional capacity) based on the previously existing impairments) with your prior residual functional capacity in order to determine whether the medical improvement is related to your ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final.

(2) *Determining medical improvement and its relationship to your abilities to do work.* Paragraphs (b)(1)(i) through (b)(1)(iii) of this section discuss what we mean by medical improvement, medical improvement not related to your ability to work, and medical improvement that is related to your ability to work. How we will arrive at the decision that medical improvement has occurred and its relationship to the ability to do work, is discussed below.

(i) *Medical improvement.* Medical improvement is any decrease in the medical severity of impairment(s) present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled and is determined by a comparison of prior and current medical evidence which must show that there have been changes (improvement) in the symptoms, signs or laboratory findings associated with that impairment(s).

(ii) *Determining if medical improvement is related to ability to work.* If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, we then must determine if it is related to your ability to do work. In paragraph (b)(1)(iv) of this section, we explain the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect your residual functional capacity. In determining whether medical improvement that has occurred is related to your ability to do work, we will assess your residual functional capacity (in accordance with paragraph (b)(1)(iv) of this section) based on the current severity of the impairment(s) which was present at your last favorable medical decision.

(iii) Your new residual functional capacity will then be compared to your residual functional capacity at the time of our most recent favorable medical decision. Unless an increase in the current residual functional capacity is based on actual changes in the signs, symptoms, or laboratory findings any medical improvement that has occurred will not be considered to be related to your ability to do work.

(iv) Following are some additional factors and considerations which we will apply in making these determination.

(A) *Previous impairment met or equaled listings.* If our most recent favorable decision was based on the fact that your impairment(s) at the time met or equaled the severity contemplated by the Listing of Impairments in Appendix 1 of Subpart P of Part 404 of this chapter, an assessment of your residual functional capacity would not have been made. If medical improvement has occurred and the severity of the prior impairment(s)

no longer meets or equals the same listing section used to make our most recent favorable decision, we will find that the medical improvement was related to your ability to work. Appendix 1 of Subpart P of Part 404 of this chapter describes impairments which, if severe enough, affect a person's ability to work. If the Appendix level severity is met or equaled the individual is deemed, in the absence of evidence to the contrary, to be unable to engage in gainful activity. If there has been medical improvement to the degree that the requirement of the listing section is no longer met or equaled, then the medical improvement is related to your ability to work. We must, of course, also establish that you can currently engage in substantial gainful activity before finding that your disability has ended.

(B) *Prior residual functional capacity assessment made.* The residual functional capacity assessment used in making the most recent favorable medical decision will be compared to the residual functional capacity assessment based on current evidence in order to determine if your functional capacity for basic work activities has increased. There will be no attempt made to reassess the prior residual functional capacity.

(C) *Prior residual functional capacity assessment should have been made, but was not.* If the most recent favorable medical decision should have contained an assessment of our residual functional capacity (i.e., your impairments did not meet or equal the level of severity contemplated by the Listing and Impairments in Appendix 1 of Subpart P of Part 404 of this chapter) but does not, either because this assessment is missing from your file or because it was not done, we will reconstruct the residual functional capacity. This reconstructed residual functional capacity will accurately and objectively assess your functional capacity to do basic work activities. We will assign the maximum functional capacity consistent with a decision of allowance.

Example: You were previously found to be disabled on the basis that "while your impairment did not meet or equal a listing, it did prevent you from doing your past or any other work." The prior adjudicator did not, however, include a residual functional capacity assessment in the rationale of this decision and a review of the prior evidence does not show that such an assessment was ever made. If a decrease in medical severity, i.e., medical improvement, has occurred, the residual functional capacity based on the current level of severity of your impairment will have to be compared with your residual functional capacity based on its prior severity in order to determine if the medical improvement is related to your ability to do work. In order to make this comparison, we will review the prior evidence and make an objective assessment of your residual functional capacity at the time of our most recent favorable medical determination, based on the symptoms, signs and laboratory findings as they then existed.

(D) *Impairment subject to temporary remission.* In some cases the evidence shows that an individual's impairments are subject to temporary remission . In assessing whether medical improvement has occurred in persons with this type of impairment, we will be careful to consider the longitudinal history of the impairment, including the occurrence of prior remission, and prospects for future worsenings. Improvement in such impairments that is only temporary will not warrant a finding of medical improvement.

(E) *Prior file cannot be located.* If the prior file cannot be located, we will first determine whether you are able to now engage in substantial gainful activity based on all your current impairments. (In this way, we will be able to determine that your disability continues at the earliest point without addressing the often lengthy process of reconstructing prior evidence.) If you cannot engage in substantial gainful activity currently, your benefits will continue unless one of the second group of exceptions applies (see paragraph (b)(4) of this section). If you are able to engage in substantial gainful activity, we will determine whether an attempt should be made to reconstruct those portions of the missing file that were relevant to our most recent favorable medical decision (e.g., work history, medical evidence from treating sources and the results of consultative examinations). This determination will consider the potential availability of old records in light of their age, whether the source of the evidence is still in operation , and whether reconstruction efforts will yield a complete record of the basis for the most recent favorable medical decision. If relevant parts of the prior record are not reconstructed either because it is determined not to attempt reconstruction or because such efforts fail, medical improvement cannot be found. The documentation of your current impairments will provide a basis for any future reviews. If the missing file is later found, it may serve as a basis for reopening any decision under this section in accordance with § 416.988.

(3) *First group of exceptions to medical improvement.* The law provides for certain limited situations when your disability can be found to have ended even though medical improvement has not occurred, if you can engage in substantial gainful activity. These exceptions to medical improvement are intended to provide a way of finding that a person is no longer disabled in those limited situations where, even though there has been no decrease in severity of the impairment(s), evidence shows that the person should no longer be considered disabled or never should have been considered disabled. If one of these exceptions applies, we must also show that, taking all your current impairment(s) into account, not just those that existed at the time of our most recent favorable medical decision, you are now able to engage in substantial gainful activity before your disability can be found to have ended. As part of the review process, you will be asked about medical or vocational therapy you received or are receiving. Your answers and the evidence gathered as a result as well as all other evidence, will serve as the basis for the finding that an exception applies.

(i) *Substantial evidence shows that you are the beneficiary of advances in medical or vocational therapy or technology (related to your ability to work).* Advances in medical or vocational therapy or technology are improvements in treatment or rehabilitative methods which have increased your ability to do basic work activities. We will apply this exception when substantial evidence shows that you have been the beneficiary of services which reflect these advances and they have favorably affected the severity of your impairment or your ability to do basic work activities. This decision will based on new medical evidence and a new residual functional capacity assessment. (See § 416.945.) This exception does not apply if you are eligible to receive special Supplemental Security Income cash benefits as explained in § 416.261. In many instances, an advanced medical therapy or technology will result in a decrease in severity as shown by symptoms, signs and laboratory findings which will meet the definition of medical improvement. This exception will, therefore, see very limited application.

(ii) *Substantial evidence shows that you have undergone vocational therapy (related to your ability to work).* Vocational therapy (related to your ability to work) may include, but is not limited to, additional education, training, or work experience that improves your ability to meet the vocational requirements of more jobs. This decision will be based on substantial evidence which includes new medical evidence and a new residual functional capacity assessment.

(See § 416.945.) This exception does not apply if you are eligible to receive special Supplemental Security Income cash benefits as explained in § 416.261. If, at the time of our review, you have not completed vocational therapy which could affect the continuance of your disability, we will review your claim upon completion of the therapy.

Example 1: You were found to be disabled because the limitations imposed on you by your impairment allowed you to only do work that was at a sedentary level of exertion. Your prior work experience was work that required a medium level of exertion. Your age and education at the time would not have qualified you for work that was below this medium level of exertion. You enrolled in and completed a specialized training course which qualifies you for a job in data processing as a computer programmer in the period since you were awarded benefits. On review of your claim, current evidence shows that there is no medical improvement and that you can still do only sedentary work. As the work of a computer programmer is sedentary in nature, you are now able to engage in substantial gainful activity when your new skills are considered.

Example 2: You were previously entitled to benefits because the medical evidence and assessment of your residual functional capacity showed you could only do light work. Your prior work was considered to be heavy in nature and your age, education and the nature of your prior work qualified you for work which was no less than medium in exertion. The current evidence and residual functional capacity show there has been no medical improvement and that you can still do only light work. Since you were originally entitled to benefits, your vocational rehabilitation agency enrolled you in and you successfully completed a trade school course so that you are now qualified to do small appliance repair. This work is light in nature, so when your new skills are considered, you are now able to engage in substantial gainful activity even though there has been no change in your residual functional capacity.

(iii) *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable decision.* Changing methodologies and advances in medical and other diagnostic or evaluative techniques have given, and will continue to give, rise to improved methods for measuring and documenting the effect of various impairments on the ability to do work. Where, by such new or improved methods, substantial evidence shows that your impairment(s) is not as severe as was determined at the time of our most recent favorable medical decision, such evidence may serve as a basis for finding that you are no longer disabled, if you can currently engage in substantial gainful activity. In order to be used under this exception, however, the new or improved techniques must have become generally available after the date of our most recent favorable medical decision.

(A) *How we will determine which methods are new or improved techniques and when they become generally available.* New or improved diagnostic techniques or evaluations will come to our attention by several methods. In reviewing cases, we often become aware of new techniques when their results are presented as evidence. Such techniques and evaluations are also discussed and acknowledged in medical literature by medical professional groups and other governmental entities. Through these sources, we develop listings of new techniques and when they become generally available. For example, we will consult the Health Care Financing Administration for its experience regarding when a technique is recognized for payment under Medicare and when they began paying for the technique.

(B) *How you will know which methods are new or improved techniques and when they become generally available.* We will let you know which methods we consider to be new or improved techniques and when they become available through two vehicles.

(*1*) Some of the future changes in the Listing of Impairments in Appendix 1 of Subchapter P of Part 404 of this chapter will be based on new or improved diagnostic or evaluation techniques. Such listings changes will clearly state this fact as they are published as Notices of Proposed Rulemaking and the new or improved technique will be considered generally available as of the date of the final publication of that particular listing in the **Federal Register.**

(*2*) A cumulative list since 1970 or new or approved diagnostic techniques or evaluations, how they changed the evaluation of the applicable impairment and the month and year they became generally available, will be published in the *Notices* section of the **Federal Register.** Included will be any changes in the Listing of Impairments published in the Code of Federal Regulations since 1970 which are reflective of new or improved techniques. No cases will be processed under this exception until this cumulative listing is so published. Subsequent changes to the list will be published periodically. The period will be determined by the volume of changes needed.

Example: The electrocardiographic exercise test has replaced the Master's 2-step test as a measurement of heart function since the time of your last favorable medical decision. Current evidence could show that your condition, which was previously evaluated based on the Master's 2-step test, is not now as disabling as was previously thought. If, taking all your current impairments into account, you are now able to engage in substantial gainful activity, this exception would be used to find that you are no longer disabled even if medical improvement has not occurred.

(iv) *Substantial evidence demonstrates that any prior disability decision was in error.* We will apply the exception to medical improvement based on error if substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) demonstrates that a prior determination was in error. A prior determination will be found in error only if:

(A) Substantial evidence shows on its face that the decision in question should not have been made (e.g., the evidence in your file such as pulmonary function study values was misread or an adjudicative standard such as a listing in Appendix 1 of Subpart P of Part 404 of this chapter or a medical/vocational rule in Appendix 2 of Subpart P of Part 404 of this chapter was misapplied).

Example 1: You were granted benefits when it was determined that your epilepsy met Listing 11.02. This listing calls for a finding of major motor seizures more frequently than once a month as documented by electroenceohalogram evidence and by a detailed description of a typical seizure pattern. A history of either diurnal episodes or nocturnal episodes with residuals interfering with daily activities is also required. On review, it is found that a history of the frequency of your seizures showed that they occurred only once or twice a year. The prior decision would be found to be in error, and whether you were still considered to be disabled would be based on whether you could currently engage in substantial gainful activity.

Example 2: Your prior award of benefits was based on vocational rule 201.12 in Appendix 2 of Subpart P of Part 404 of this chapter. This rule applies to a person age 50–54 who has at least a high school eduction, whose previous work was entirely at a semiskilled level, and who can do only sedentary work. On review, it is found that at the time of the prior determination you were actually only age 46 and vocational rule 201.21 should have been used. This rule would have called for a denial of your claim and the prior decision is found to have been in error. Continuation of your disability would depend on a finding of your current ability to engage in substantial gainful activity.

(B) At the time of the prior evaluation, required and material evidence of the

severity of your impairment(s) was missing. That evidence becomes available upon review, and substantial evidence demonstrates that had such evidence been present at the time of the prior determination, disability would not have been found.

Example: You were found disabled on the basis of chronic obstructive pulmonary disease. The severity of your impairment was documented primarily by pulmonary function testing results. The evidence showed that you could do only light work. Spirometric tracings of this testing, although required, were not obtained, however. On review, the ogrignal report is resubmitted by the consultative examining physician along with the corresponding spirometric tracings. A review of the tracings shows that the test was invalid. Current pulmonary function testing supported by spirometric tracings reveals that your impairment does not limit your ability to perform basic work activities in any way. Error is found based on the fact that required, material evidence which was originally missing now becomes available and shows that if it had been available at the time of the prior determination, disability would not have been found.

(C) Substantial evidence which is new evidence which relates to the prior determination (of allowance or continuance) refutes the conclusions that were based upon the prior evidence (e.g., a tumor thought to be malignant was later shown to have actually been benign). Substantial evidence must show that had the new evidence, (which relates to the prior determination) been considered at the time of the prior decision, the claim would not have been allowed or continued. A substitution of current judgment for that used in the prior favorable decision will not be the basis for applying this exception.

Example: You were previously found entitled to benefits on the basis of diabetes mellitus which the prior adjudicator believed was equivalent to the level of severity contemplated in the Listing of Impairments. The prior record shows that you had "brittle" diabetes for which you were taking insulin. Your urine was 3+ for sugar, and you alleged occasional hypoglycemic attacks caused by exertion. On review, symptoms, signs and laboratory findings are unchanged. The current adjudicator feels, however, that your impairment clearly does not equal the severity contemplated by the listings. Error *cannot* be found because it would represent a substitution of current judgment for that of the prior adjudicator that your impairment equaled a listing.

(D) The exception for error will not be applied retroactively under the conditions set out above unless the conditions for reopening the prior decision (see §§ 416.1488 through 416.1489) are met.

(v) *You are currently engaging in substantial gainful activity.* If you are currently engaging in substantial gainful activity before we determine whether you are no longer disabled because of your work activity, we will consider whether you are entitled to a trial work period as set out in § 416.992. We will find that your disability has ended in the month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period, where it applies). This exception does not apply if you are eligible to receive special Supplemental Security Income cash benefits as explained in § 416.261. This exception also does not apply in determining whether you continue to have a disabling impairment(s) (§ 416.911) for purposes of deciding your eligibility for a reentitlement period (§ 416.992a).

(4) *Second group of exceptions to medical improvement.* In addition to the first group of exceptions to medical improvement, the following exceptions may result in a determination that you are no longer disabled. In these situations the decision will be made without a determination that you have medically improved or can engage in substantial gainful activity.

(i) *A prior determination was fraudulently obtained.* If we find that any prior favorable determination was obtained by fraud, we may find that you are not disabled. In addition, we may reopen your claim under the rules in § 416.988.

(ii) *You do not cooperate with us.* If there is a question about whether you continue to be disabled and we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail (without good cause) to do what we ask. Section 416.911 discusses how we will decide whether you have good cause for failure to cooperate. The month in which your disability ends will be the first month in which you failed to do what we asked.

(iii) *We are unable to find you.* If there is a question about whether you continue to be disabled and we are unable to find you to resolve the question, we will suspend your payments. The month your payments are suspended will be first month in which the question arose and we could not find you.

(iv) *You fail to follow prescribed treatment which would be expected to restore your ability to engage in substantial gainful activity.* If treatment has been prescribed for you which would be expected to restore your ability to work, you must follow that treatment in order to be paid benefits. If you are not following that treatment and you do not have good cause for failing to follow that treatment, we will find that your disability has ended (see § 416.930(c)). The month your disability ends will be the first month in which you failed to follow the prescribed treatment.

(5) *Evaluation Steps.* To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficent way, and that any decision to stop disability benefits are made objectively, neutrally and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be *continued* at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. The steps are:

(i) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended (see paragraph (b)(3)(v) of this section).

(ii) If you are not, do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in Appendix 1 of Subpart P of Part 404 of this chapter? If you do, your disability will be found to continue.

(iii) If you do not, has there been medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step (iv). If there has been no decrease in medical severity, there has been no medical improvement. (See step (v).)

(iv)) If there has been medical improvement, we must determine whether it is related to our ability to do work in accordance with paragraphs (b)(1)(i) through (b)(1)(iv) of this section; i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to your ability to work, see step (v). If medical improvement *is* related to your ability to do work, see step (vi).

(v) If we found at step (iii) that there has been no medical improvement or if we found at step (iv) that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will

be found to continue. If one of the first group of exceptions to medical improvement applies, see step (vi). If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.

(vi) If medical improvement is shown to be related to your ability to do work or if one of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments (in combination) are severe (see § 416.921). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in step (iv) above shows significant limitation of your ability to do basic work activities, see step (vii). When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered to be disabled.

(vii) If your impairment(s) is severe, we will assess your current ability to engage in substantial gainful activity in accordance with §§416.960 through 416.969. That is we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, disability will be found to have ended.

(viii) If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue.

(6) *The month in which we will find you are no longer disabled.* If the evidence shows that you are no longer disabled, we will find that your disability ended in the following month—

(i) For purposes of § 416.1331 (under which benefits can be paid for the month in which disability ends and the two following months) the earliest of the following months—

(A) The month the evidence shows that you are no longer disabled under the rules set out in this section, and you were disabled only for a specified period of time in the past;

(B) The month the evidence shows that you are no longer disabled under the rules set out in this section, but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not disabled;

(C) The month in which you return to full-time work, with no significant medical restrictions and acknowledge that medical improvement has occurred, and we expected your impairment(s) to improve (see § 416.991);

(D) The first month following completion of your trial work period for which it is determined that you have demonstrated the ability to do substantial gainful activity;

(E) The first month in which you fail without good cause to follow prescribed treatment, when the rule set out in paragraph (b)(4)(iv) of this section applies;

(F) The first month in which you were told by your physician that you could return to work provided there is no substantial conflict between your physician's and your statements regarding your awareness of your capacity for work and the earlier date is supported by substantial evidence; or

(G) The first month in which you failed without good cause to do what we asked, when the rule set out in paragraph (b)(4)(ii) of this section applies.

(ii) For all other purposes, the month preceding the termination month. The termination month, as that term is used in this paragraph, is the first month after the 15-month reentitlement period (described in § 416.992a, in which you engage in or are determined able to engage in substantial gainful activity or, if earlier, the first month after a trial work period in which your impairment is determined, based on medical or other evidence, to no longer exist or not be a disabling impairment as described in § 416.911.

(7) *Before we stop your benefits.* If we find you are no longer disabled, before we stop your benefits, we will give you a chance to explain why we should not do so. Subparts M and N of this Part describe your rights and the procedures we will follow.

(c) *Disabled persons under age 18 (children).* If you are entitled to disability benefits as a disabled child under age 18, there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work (i.e., your ability to perform age-appropriate activities). If your impairment(s) has not medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies (see paragraph (c)(4) of this section for exceptions) in most cases before we can find that you are no longer disabled, we must also show, based on current medical evidence, that you no longer suffer from any medically determinable physical or mental impairment(s) of comparable severity to any impairment(s) which would make an adult disabled. As set out in § 416.923, this will be determined based on whether or not your impairment(s) meets or equals the requirements in Appendix 1 of Subpart P of Part 404 of this chapter.

(1) *Terms and definitions.* There are several terms and definitions which are important to know in order to understand how we review your claim to determine whether your disability continues.

(i) *Medical improvement.* Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings (see § 416.928) associated with your impairment(s).

Example 1: A child was allowed as meeting Listing 101.08 due to chronic osteomyelitis of the knee. At the time he has redness and drainage of the infected site which persisted despite therapy. Current evidence shows that he responded to intensive medication and treatment. He has had no episodes of acute activity or drainage for the past 8 months and has only mild limitation of knee motion.

Medical improvement has occurred because there has been a decrease in the severity of the child's impairment as documented by the current symptoms and signs reported by his physician.

Example 2: Under the medical equivalence provision of § 416.926, a child was found disabled based on a deformed leg and a hearing impairment. At the time the child's disability was reevaluated, an operation had resulted in minor improvement in the leg deformity, the hearing impairment had deteriorated somewhat, and, in addition the child now has a seizure disorder with infrequent seizures. Medical improvement will not be found, because considering only the impairments present at the time of the prior favorable medical decision, the medical

severity of the child's prior impairments has not decreased.

(ii) *Determining whether medical improvement is related to your ability to work.* If medical improvement has occurred and the severity of the prior impairment(s) no longer meets or equals the listing section which was used in making our most recent favorable decision, we will find that the medical improvement was related to your ability to work (i.e., your ability to perform age-appropriate activities). Appendix 1 of Subpart P of Part 404 of this chapter describes impairments which, if severe enough, affect a person's ability to work. If the appendix level severity is met or equaled the individual is deemed, in the absence of evidence to the contrary, to be unable to engage in substantial gainful activity. If there has been medical improvement to the degree that the requirement of the listing section is no longer met or equaled, then the medical improvement is related to your ability to work. We must, of course, also establish that, considering all of your current impairments, your condition does not meet or equal the requirements of Appendix 1 of Subpart P of Part 404 of this chapter before we could find that your disability has ended. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.

(iii) *Determining whether your impairment(s) is of comparable severity to any impairment(s) which would make an adult (a person age 18 or over) disabled.* Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases before we can find that you are no longer disabled, we must also show that you no longer suffer from any medically determinable physical or mental impairment(s) of comparable severity to any impairment(s) which would make an adult disabled. This will be determined based on whether or not your impairment(s) meets or equals the requirements in Appendix 1 of Subpart P of Part 404 of this chapter. All current impairments will be considered, not just the impairment(s) present at the time of our most recent favorable determination. Sections 416.925, 416.926, and 416.978 set out how we will decide whether your impairment(s) meets or equals the requirements of Appendix 1 of Subpart P of Part 404 of this chapter.

(iv) *Evidence and basis for our decision.* Our decisions under this section will be made on a neutral basis without any initial inference as to the presence or absence of disability being drawn from the fact that you have previously been determined to be disabled. We will consider all evidence you submit, as well as all evidence we obtain from your treating physician(s) and other medical or nonmedical sources. What constitutes "evidence" and our procedures for obtaining it are set out in §§ 416.912 through 416.918. Our determination regarding whether your disability continues will be made on the basis of the weight of the evidence.

(v) *Point of comparison.* For purpose of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time. If medical improvement has occurred, we will determine whether the medical improvement is related to your ability to do work (i.e., to perform age-appropriate activities) based on the prior impairments(s). The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final.

(2) *Determining medical improvement and its relationship to your ability to do work.* Paragraphs (c)(1)(i) and (c)(1)(ii) of this section discuss what we mean by medical improvement and how we determine whether medical improvement is related to your ability to work.

(i) *Medical Improvement.* Medical improvement is any decrease in the medical severity of impairment(s) present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. Whether medical improvement has occurred is determined by a comparison of prior and current medical evidence which must show that there have been changes (improvement) in the symptoms, signs or laboratory findings associated with that impairment(s).

(ii) *Determining if medical improvement is related to ability to work.* If there is a decrease in medical severity as shown by the signs, symptoms, and laboratory findings, we then must determine if it is related to your ability to do work (i.e., to perform age appropriate activities), as explained in paragraph (c)(1)(ii) of this section. In determining if the medical improvement that has occurred is related to your ability to work, we will assess whether the previously existing impairment(s) still meets or equals the level of severity contemplated by the same listing section in Appendix 1 of Subpart P of Part 404 of this chapter which was used in making our most recent favorable decision. Appendix 1 of Subpart P of Part 404 of this Chapter describes impairments which, if severe enough, affect a person's ability to work. If the appendix level severity is met or equaled, the individual is deemed, in the absence of evidence to the contrary, to be unable to engage in substantial gainful activity. If there has been medical improvement to the degree that the requirement of the listing section is no longer met or equaled, then the medical improvement is related to your ability to work. Unless an objective assessment shows that the listing requirement is no longer met or equaled based on actual changes in the medical evidence, the medical improvement that has occurred will not be considered to be related to your ability to work.

(iii) *Prior file cannot be located.* If the prior file cannot be located, we will first determine whether your current impairment(s) meets or equals the requirements of Appendix 1 of Subpart P of Part 404 of this chapter. (In this way, we will determine that your benefits continue at the earliest time without addressing the often lengthy process of reconstructing prior evidence.) If so, your benefits will continue unless one of the second group of exceptions applies (see paragraph (c)(4) of this section). If not, we will determine whether an attempt should be made to reconstruct those portions of the missing file that were relevant to our most recent favorable medical decision (e.g., medical evidence from treating sources and the results of consultative examinations). This determination will consider the potential availability of old records in light of their age, whether the source of the evidence is still in operation; and whether reconstruction efforts will yield a complete record of the basis for the most recent favorable medical decision. If relevant parts of the prior record are not reconstructed either because it is determined not to attempt reconstruction or because such efforts fail, medical improvement cannot be found. The documentation of your current impairment(s) will provide a basis for any future reviews. If the missing file is later found, it may serve as a basis for reopening any decision under this section in accordance with the rules in § 416.988.

(iv) *Impairment subject to temporary remission.* In some cases the evidence shows that an individual's impairment is subject to temporary remission. In

assessing whether medical improvement has occurred in persons with this type of impairment, we will be careful to consider the longitudinal history of the impairment(s), including the occurrence of prior remissions, and prospects for future worsening of the impairment(s). Improvement in such impairments that is only temporary will not warrant a finding of medical improvement.

(v) *Applicable listing has been revised since the most recent favorable medical decision.* When determining whether any medical improvement is related to your ability to work, we use the same listing section in Appendix 1 of Subpart P of Part 404 of this chapter which was used to make our prior favorable decision. We will use the listing as it appeared at the time of the prior decision, even where the requirement(s) of the listing was subsequently changed. The current, revised listing requirement will be used if we determine that you have medically improved and it is necessary to determine whether your current impairment(s) is of comparable severity to any impairment(s) which would make an adult disabled.

(3) *First group of exceptions to medical improvement.* The law provides for certain limited situations when your disability can be found to have ended even though medical improvement has not occurred, if your impairment(s) is no longer of comparable severity to any impairment(s) which would make an adult disabled. These exceptions to medical improvement are intended to provide a way of finding that a person is no longer disabled in those limited situations where, even though there has been no decrease in severity of the impairment(s), evidence shows that the persons should no longer be considered disabled or never should have been considered disabled. If one of these exceptions applies, before we can find you are no longer disabled, we must also show that, taking all your current impairment(s) into account, not just those that existed at the time of our most recent favorable medical decision, your impairment(s) no longer meets or equals the requirements in Appendix 1 of Subpart P of Part 404 of this chapter. As part of the review process, you will be asked about any medical therapy you received or are receiving. Your answers and the evidence gathered as a result as well as all other evidence, will serve as the basis for the finding that an exception does or does not apply.

(i) *Substantial evidence shows that you are the beneficiary of advances in medical therapy or technology (related to your ability to work).* Advances in medical therapy or technology are improvements in treatment or rehabilitative methods which have reduced the severity of your impairment(s). We will apply this exception when substantial evidence shows that you have been the beneficiary of services which reflect these advances and they have favorably affected the severity of your impairment(s). This decision will be based on new medical evidence. This exception does not apply if you are eligible to receive special Supplemental Security Income cash benefits as explained in § 416.261. In many instances, an advanced medical therapy or technology will result in a decrease in severity as shown by symptoms, signs and laboratory findings which will meet the definition of medical improvement. The exception will, therefore, see very limited application.

(ii) *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable decision.* Changing methodologies and advances in medical and other diagnostic or evaluative techniques have given, and will continue to give, rise to improved methods for measuring and documenting the effect of various impairments on the ability to do work. Where, by such new or improved methods, substantial evidence shows that your impairment(s) is not as severe as was determined at the time of our most recent favorable medical decision, such evidence may serve as a basis for finding that you are no longer disabled, if your impairment(s) no longer meets or equals the requirements of Appendix 1 of Subpart P of Part 404 of this chapter. In order to be used under this exception, however, the new or improved techniques must have become generally available after the date of our most recent favorable medical decision.

(A) *How we will determine which methods are new or improved techniques and when they become generally available.* New or improved diagnostic techniques or evaluations will come to our attention by several methods. In reviewing cases, we often become aware of new techniques when their results are presented as evidence. Such techniques and evaluations are also discussed and acknowledged in medical literature by medical professional groups and other governmental entities.Through these sources, we develop listings of new techniques and when they become generally available. For example, we will consult the Health Care Financing Administration for its experience regarding when a technique is recognized for payment under Medicare and when they began paying for the technique.

(B) *How you will know which methods are new or improved techniques and when they become generally available.* We will let you know which methods we consider to be new or improved techniques and when they become available through two vehicles.

(*1*) Some of the future changes in the Listing of Impairments in Appendix 1 of Subpart P of Part 404 of this chapter will be based on new or improved diagnostic or evaluative techniques. Such listing changes will clearly state this fact as they are published as Notices of Proposed Rulemaking and the new or improved technique will be considered generally available as of the date of the final publication of that particular listing in the **Federal Register.**

(*2*) A cumulative list since 1970 of new or improved diagnostic techniques or evaluations, how they changed the evaluation of the applicable impairment and the month and year they became generally available, will be published in the Notices section of the **Federal Register.** Included will be any changes in the Listing of Impairments published in the Code of Federal Regulations since 1970 which are reflective of new or improved techniques. No cases will be processed under this exception until this cumulative listing is so published. Subsequent changes to the list will be published periodically. The period will be determined by the volume of changes needed.

(iii) *Substantial evidence demonstrates that any prior disability decision was in error.* We will apply the exception to medical improvement based on error if substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) demonstrates that a prior determination was in error. A prior determination will be found in error only if:

(A) Substantial evidence shows on its face that the decision in question should not have been made (e.g., the evidence in your file such as pulmonary function study values was misread or an adjudicative standard such as a listing in Appendix 1 of Subpart P of Part 404 of this chapter was misapplied).

Example: You were granted disability benefits when it has determined that your

epilepsy met Listing 111.02A. This listing calls for a finding of major motor seizures more frequently than once a month despite at least 3 months of prescribed treatment. A history of either diurnal episodes or nocturnal episodes with residuals interfering with daily activities is also required. On review, it is found that a history of the frequency of your seizures showed that they occurred only once or twice a year. The prior decision would be found to be in error, and whether you were still considered to be disabled would be based on whether your current impairment(s) meet or equal the requirements of Appendix 1 of Subpart P of Part 404 of the chapter.

(B) At the time of the prior evaluation, required and material evidence of the severity of your impairment(s) was missing. That evidence becomes available upon review, and substantial evidence demonstrates that had such evidence been present at the time of the prior determination, disability would not have been found.

(C) Substantial evidence which is new evidence which relates to the prior determination (of allowance or continuance) refutes the conclusions that were based upon the prior evidence (e.g., a tumor thought to be malignant was later shown to have actually been benign).

(D) Substantial evidence must show that had the new evidence (which relates to the prior determination) been considered at the time of the prior decision, the claim would not have been allowed or continued. A substitution of current judgment for that used in the prior favorable decision will not be the basis for applying this exception.

(E) The exception for error will not be applied retroactively under the conditions set out above unless the conditions for reopening the prior decision (see § 416.988) are met.

(iv) *You are currently engaging in substantial gainful activity.* If you are currently engaging in substantial gainful activity, before we determine whether you are no longer disabled because of your work activity, we will consider whether you are entitled to a trial work period as set out in § 416.992. We will find that your disability has ended in the month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period, where it applies). This exception does not apply if you are eligible to receive special Supplemental Security Income cash benefits as explained in § 416.261. This exception also does not apply in determining whether you continue to have a disabling impairment(s) (§ 416.911) for purposes of deciding your eligibility for a reentitlement period (§ 416.992a).

(4) *Second group of exceptions to medical improvement.* In addition to the first group of exceptions to medical improvement, the following exceptions may result in a determination that you are no longer disabled. In these situations the decision will be made without a determination that you have medically improved or can engage in gainful activity.

(i) *A prior determination was fraudulently obtained.* If we find that any prior favorable determination was obtained by fraud, we may find that you are not disabled. In addition, we may reopen your claim under the rules in § 416.988.

(ii) *You do not cooperate with us.* If there is a question about whether you continue to be disabled and we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail (without good cause) to do what we ask. Section § 416.911 discusses how we will decide whether you have good cause for failure to cooperate. The month in which your disability ends will be the first month in which you failed to do what we asked.

(iii) *We are unable to find you.* If there is a question about whether you continue to be disabled and we are unable to find you to resolve the question, we will suspend your payments. The month your payments are suspended will be the first month in which the question arose and we could not find you.

(iv) *You fail to follow prescribed treatment which would be expected to restore your ability to engage in gainful activity.* If treatment has been prescribed for you which would be expected to restore your ability to work, you must follow that treatment in order to be paid benefits. If you are not following that treatment and you do not have good cause for failing to follow that treatment, we will find that your disability has ended (see § 416.930(c)). The month your disability ends will be the first month in which you failed to follow the prescribed treatment.

(5) *Evaluation Steps.* To assure that disability reviews are carried out in a uniform manner, that decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decision to stop disability benefits is made objectively, neutrally and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may stop and benefits may be *continued* at any point if we determine there is sufficient evidence to find that you are still disabled. The steps are:

(i) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended.

(ii) If you are not, has there been medical improvement as defined in paragraph (c)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step (3). If there has been no decrease in medical severity, there has been no medical improvement, see step (iv).

(iii) If there has been medical improvement, we must determine (in accordance with paragraph (c)(1)(ii) of this section) whether it is related to your ability of work. If medical improvement is not related to your ability to do work, see step (iv). If medical improvement is related to your ability to do work, see step (v).

(iv) If we found at step (ii) that there has been no medical improvement or if we found at step (iii) that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (c)(3) and (c)(4) of this section apply. If none of them apply, your disability will be found to continue. If one of the first group of exceptions to medical improvement (see paragraph (c)(3) of this section) applies, we will proceed to step (v). If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.

(v) If medical improvement is related to your ability to work or if one of the first group of exceptions to medical improvement applies, we will determine (considering all your impairments) whether your medical condition meets or equals the requirements of Appendix 1 of Subpart P of Part 404 of this chapter. If your impairment(s) meets or equals the requirements of Appendix 1 of Subpart P of Part 404 of this chapter, your disability will be found to continue. If not, your disability will be found to have ended.

(6) *The month in which we find you are no longer disabled.* If the evidence shows that you are no longer disabled, we will find that your disability ended in the following month—

(i) For purposes of § 416.1331 (under which benefits can be paid for the month in which disability ends and the two following months) the earliest of the following months—

(A) The month the evidence shows that you are no longer disabled under

the rules set out in this section, and you were disabled only for a specified period of time in the past;

(B) The month the evidence shows that you are no longer disabled under the rules set out in this section, but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not disabled;

(C) The month in which you return to full-time work, with no significant medical restrictions and acknowledge that medical improvement has occurred, as long as we expected your impairment to improve (see § 416.991);

(D) The first month following completion of your trial work period for which it is determined that you have demonstrated the ability to do substantial gainful activity;

(E) The first month in which you fail without good cause to follow prescribed treatment, when the rule set out in paragraph (c)(4)(iv) of this section applies;

(F) The first month in which your doctor told you could return to work, provided there is no substantial conflict between your physician's and your statements regarding your awareness of your capacity for work and the earlier date is supported by substantial evidence; or

(G) The first month in which you failed without good cause to do what we asked, when the rule set out in paragraph (c)(4)(ii) of this section applies.

(ii) For all other purposes, the month preceding the termination month. The termination month, as that term is used in this paragraph, is the first month after the 15-month reentitlement period (described in § 416.992a), in which you engage in or are determined able to engage in substantial gainful activity or, if earlier, the first month after a trial work period in which your impairment is determined, based on medical or other evidence, to no longer exist or not to be a disabling impairment as described in § 416.911.

(7) *Before we stop your benefits.* If we find you are no longer disabled, before we determine you are no longer disabled, we will give you a chance to explain why we should not do so. Subpart M and N of this Part described your rights and the procedures we will follow.

(d) *Persons who were found disabled under a State plan.* If you became entitled to benefits because you were found to be disabled under a State plan, we will first evaluate your impairment(s) under the rules explained in paragraphs (a), (b), or (c) of this section. We will apply the same steps as described in paragraphs (a), (b), or (c) of this section to the last decision granting or affirming entitlement to benefits under the State plan. If we are not able to find that your disability continues on the basis of these rules, we will then evaluate your impairment(s) under the appropriate State plan. If we are not able to find that your disability continues under these State plan criteria, we will find that your disability ends. Disability will be found to end the month the evidence shows that you are no longer disabled under the criteria in paragraphs (b) or (c), of this section (or appropriate State plan criteria), subject to the rules set out in paragraphs (b)(6) and (c)(6) of this section.

9. Section 416.998 is revised to read as follows:

§ 416.998 If you become disabled by another impairment(s).

If a new severe impairment(s) begins in or before the month in which your last impairment(s) ends, we will find that your disability to continuing. The new impairment(s) need not be expected to last 12 months or to result in death, but it must be severe enough to keep you from doing substantial gainful activity, or severe enough so that you are still disabled under § 416.994.

[FR Doc. 85-28887 Filed 12-5-85; 8:45 am]
BILLING CODE 4190-11-M

federal register

Friday
December 6, 1985

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing Applications; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service Department of Commerce Washington, DC 20235 or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422;

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 300 South New Street, Dover, DE 19901, 302/674–2331;

David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571–1366;

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00818, 809/753–6910;

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228–2815;

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill S treet, Portland, OR 97201, 503/221–6352;

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 411 W. Fourt Avenue, Suite 2D, Anchorage, AK 99510, 907/271–4060;

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523–1368.

FOR FURTHER INFORMATION CONTACT: John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202–634–7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983 issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1986 have been received between November 25, and December 3, 1985, from the Governments shown below.

Dated: December 4, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resources Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code fishery	Regional fishery management councils
ABS Atlantic Billfishes and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA Gulf of Alaska	North Pacific
NWA Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA Snails (Bering Sea)	North Pacific.
WOC Pacific Groundfish (Washington, Oregon and California)	Pacific.
PBS Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel in support of U.S. vessels (Joint Venture).

Joint Venture

Italy

The Government of Italy has submitted permit applications to engage in joint venture activities in the Northwest Atlantic Ocean fisheries during 1986. The applications request that vessels of Italy receive transshipments of U.S. harvested *Illex* and *Loligo* squid and associated bycatch species. Each squid request is for 1,500 mt. The American partner identified is IST Corporation, Inc., Cape May, New Jersey.

Taiwan

Taiwan has submitted permit applications to engage in joint venture activities in the Alaskan fisheries. The species request in the GOA is: flounder (1,200 mt), Pacific cod (2,800 mt), and sable fish, rockfish, and other associated bycatch species. The species request in the BSA is: Pacific cod (2,100 mt), flounders (1,000 mt), turbots (1,000 mt) and Alaskan pollock, rockfish, sablefish and other bycatch species. The American partners are Alaska Contact Ltd., Anchorage, AK and Windjammer Seafoods, Inc., Seattle, WA.

BILLING CODE 3510-22-M

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
***GOVERNMENT OF THE GERMAN DEMOCRATIC REPUBLIC			
BREITLING CARGO/TRANSPORT VESSEL	GC-86-0012	NAA	3
EMM WELK LARGE STERN TRAWLER	GC-86-0041	NAA	1*
F. C. WEISKOPF LARGE STERN TRAWLER	GC-86-0030	NAA	1*
***GOVERNMENT OF ITALY			
CARLO DIFAZIO MEDIUM STERN TRAWLER	IT-86-0015	NAA	1*
DEGIOSA GIUSEPPE MEDIUM STERN TRAWLER	IT-86-0016	NAA	1*
DEGIOSA T. MEDIUM STERN TRAWLER	IT-86-0004	NAA	1*
MARIA C. MEDIUM STERN TRAWLER	IT-86-0021	NAA	1*
MARIA MICHELA MEDIUM STERN TRAWLER	IT-86-0024	NAA	1*
TONTINI PESCA QUARTO LARGE STERN TRAWLER	IT-86-0003	NAA	1*
***GOVERNMENT OF JAPAN			
DAIEI MARU NO. 2 MEDIUM STERN TRAWLER	JA-86-0544	BSA	1*
DAIKICHI MARU NO.1 SMALL STERN TRAWLER	JA-86-1198	BSA	1
DAIKICHI MARU NO.32 MEDIUM STERN TRAWLER	JA-86-0554	BSA	1
DAIKICHI MARU NO.5 SMALL STERN TRAWLER	JA-86-0187	BSA	1
DAIKICHI MARU NO.51 MEDIUM STERN TRAWLER	JA-86-0484	BSA	1
DAITO MARU NO. 68 SMALL STERN TRAWLER	JA-86-1565	BSA	1
EIKYU MARU NO. 86 SMALL STERN TRAWLER	JA-86-1186	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
FUKUCHO MARU NO.23 MEDIUM STERN TRAWLER	JA-86-0495	BSA	1*
FUKUHO MARU NO.18 CHARTER	JA-86-0528	BSA	1
FUKUYOSHI MARU NO. 8 LONGLINE FISHING VESSEL	JA-86-0624	BSA,SOA	1*
FUKUYOSHI MARU NO.28 MEDIUM STERN TRAWLER	JA-86-0472	BSA	1
GINRYU MARU NO.5 TANKER FUEL/WATER	JA-86-1171	BSA	1
HAKUREI MARU PAIR TRAWLER	JA-86-0013	BSA	1
HOKKO MARU NO. 137 SMALL STERN TRAWLER	JA-86-1199	BSA	1
HOKUYU MARU NO. 68 MEDIUM STERN TRAWLER	JA-86-1177	BSA	1
JUKYU MARU NO. 58 SMALL STERN TRAWLER	JA-86-0635	BSA	1
KAIUN MARU NO. 65 MEDIUM STERN TRAWLER	JA-86-2010	BSA	1
KAIYO MARU NO.18 SMALL STERN TRAWLER	JA-86-0079	BSA	1
KAIYO MARU NO.53 MEDIUM STERN TRAWLER	JA-86-0464	BSA	1
KAIYO MARU NO.7 MEDIUM STERN TRAWLER	JA-86-0431	BSA	1
KASHIMA MARU NO.8 SMALL STERN TRAWLER	JA-86-0183	BSA	1
KOEI MARU NO.15 MEDIUM STERN TRAWLER	JA-86-1396	BSA	1
KOEI MARU NO.51 MEDIUM STERN TRAWLER	JA-86-1173	BSA	1
KOHOKU MARU NO.7 SMALL STERN TRAWLER	JA-86-1191	BSA	1
KORYO MARU NO. 108	JA-86-0421	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
MEDIUM STERN TRAWLER			
KOSHIN MARU NO.21 SMALL STERN TRAWLER	JA-86-1503	BSA	1
KOYO MARU PAIR TRAWLER	JA-86-0112	BSA	1
KYOWA MARU NO. 15 MEDIUM STERN TRAWLER	JA-86-0305	BSA	1
MANRYO MARU NO. 52 SMALL STERN TRAWLER	JA-86-1189	BSA	1
MEISHO MARU NO.35 MEDIUM STERN TRAWLER	JA-86-0522	BSA	1
NISSHIN MARU NO.51 MEDIUM STERN TRAWLER	JA-86-1168	BSA	1
ORIENTAL CRANE TANKER FUEL/WATER	JA-86-0184	BSA	3
RYOAN MARU NO.35 SMALL STERN TRAWLER	JA-86-1195	BSA	1
RYUHO MARU NO.31 MEDIUM STERN TRAWLER	JA-86-0506	BSA	1*
RYUJIN MARU NO.21 SMALL STERN TRAWLER	JA-86-0634	BSA	1
RYUSEI MARU CARGO/TRANSPORT VESSEL	JA-86-0093	BSA,GOA,NWA, SNA	3
RYUSHO MARU CARGO/TRANSPORT VESSEL	JA-86-0627	BSA,GOA,NWA, SNA	3
RYUSHO MARU NO. 15 LONGLINER/GILLNET	JA-86-0619	BSA,GOA	1*
SANTIAGO TANKER FUEL/WATER	JA-86-0185	BSA	3
SAPPORO MARU CARGO/TRANSPORT VESSEL	JA-86-0585	BSA,GOA,NWA, SNA	3
SEIJU MARU NO.28 MEDIUM STERN TRAWLER	JA-86-0465	BSA	1
SEITOKU MARU NO.106 MEDIUM STERN TRAWLER	JA-86-0411	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
SEIYOH MARU CARGO/TRANSPORT VESSEL	JA-86-0583	BSA,GOA,NWA, SNA	3
SHOEI MARU NO. 5 SMALL STERN TRAWLER	JA-86-0639	BSA	1
SHOSHIN MARU NO. 20 MEDIUM STERN TRAWLER	JA-86-1178	BSA	1
SHOTOKU MARU NO. 63 SMALL STERN TRAWLER	JA-86-1194	BSA	1
SHOYO MARU (A) MEDIUM STERN TRAWLER	JA-86-1394	BSA	1
TAISEI MARU NO. 35 MEDIUM STERN TRAWLER	JA-86-0636	BSA	1
TAISEI MARU NO.16 MEDIUM STERN TRAWLER	JA-86-0450	BSA	1
TEISHO MARU NO. 18 MEDIUM STERN TRAWLER	JA-86-0335	BSA	1
TENYOSHI MARU TANKER FUEL/WATER	JA-86-0186	BSA	3
TENYU MARU NO.57 SMALL STERN TRAWLER	JA-86-0637	BSA	1
TOMI MARU NO. 81 SMALL STERN TRAWLER	JA-86-1192	BSA	1
TOMI MARU NO.82 SMALL STERN TRAWLER	JA-86-1193	BSA	1
TORA MARU NO. 58 SMALL STERN TRAWLER	JA-86-1190	BSA	1
YAHATA MARU NO. 58 MEDIUM STERN TRAWLER	JA-86-0632	BSA	1
YAKUSHI MARU NO. 51 MEDIUM STERN TRAWLER	JA-86-0638	BSA	1
YAMASAN MARU NO. 101 SMALL STERN TRAWLER	JA-86-1184	BSA	1
YAMASAN MARU NO. 102 SMALL STERN TRAWLER	JA-86-1185	BSA	1
YOSHI MARU NO. 81 MEDIUM STERN TRAWLER	JA-86-0555	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
***GOVERNMENT OF THE REPUBLIC OF KOREA			
CHEOG YANG HO LARGE STERN TRAWLER	KS-86-0003	BSA,GOA	1
CORAL STAR CARGO/TRANSPORT VESSEL	KS-86-0135	BSA,GOA	3
CRYSTAL DAHLIA LARGE STERN TRAWLER	KS-86-0034	BSA,GOA	1
DAE JIN NO.21 LARGE STERN TRAWLER	KS-86-0136	BSA,GOA	2
DAE SUNG HO LARGE STERN TRAWLER	LS-86-0051	BSA,GOA	1
DAEJIN NO. 52 LARGE STERN TRAWLER	KS-86-0037	BSA,GOA	1*
DONGSAN-HO LARGE STERN TRAWLER	KS-86-0039	BSA,GOA	1
GAE CHEOG HO FACTORY SHIP	KS-86-0112	BSA,GOA	3
GAE CHEOG HO NO. 2 CARGO/TRANSPORT VESSEL	KS-86-0090	BSA,GOA	3
GAE YANG HO LARGE STERN TRAWLER	KS-86-0001	BSA,GOA	1*
HAN JIN HO LARGE STERN TRAWLER	KS-86-0045	BSA,GOA	1
HAN KIL HO LARGE STERN TRAWLER	KS-86-0044	BSA,GOA	1
HANIL HO MEDIUM STERN TRAWLER	KS-86-0107	BSA,GOA	1
JOON SUNG HO LARGE STERN TRAWLER	KS-86-0137	BSA,GOA	2
KYUNG YANG HO LARGE STERN TRAWLER	KS-86-0085	BSA,GOA	1
NAM BUG LARGE STERN TRAWLER	KS-86-0033	BSA,GOA	1
NO. 215 TAE BAEK MEDIUM STERN TRAWLER	KS-86-0105	BSA,GOA	1*

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
NO. 29 TAE BAEK FACTORY SHIP	KS-86-0091	BSA,GOA	1*
NO. 315 TAE BAEK MEDIUM STERN TRAWLER	KS-86-0117	BSA,GOA	1*
NO. 315 TAE BAEK LARGE STERN TRAWLER	KS-86-0117	BSA,GOA	1
NO. 70 OYANG HO LARGE STERN TRAWLER	KS-86-0048	BSA,GOA	1*
NO. 71 DONG BANG LARGE STERN TRAWLER	KS-86-0121	BSA,GOA	1
NO. 77 DONG BANG CARGO/TRANSPORT VESSEL	KS-86-0118	BSA,GOA	3
NO.1 HAN SUNG LARGE STERN TRAWLER	KS-86-0106	BSA,GOA	1
NO.3 CHIL BO SAN HO CARGO/TRANSPORT VESSEL	KS-86-0074	BSA,GOA	3
NO.5 CHIL BO SAN HO CARGO/TRANSPORT VESSEL	KS-86-0075	BSA,GOA	3
NO.6 CHIL BO SAN HO CARGO/TRANSPORT VESSEL	KS-86-0076	BSA,GOA	3
NO.7 SANG WON MEDIUM STERN TRAWLER	KS-86-0041	BSA,GOA	1
NO.99 TAE BAEK FACTORY SHIP	KS-86-0079	BSA,GOA	3
ODAEYANG NO. 106 CARGO/TRANSPORT VESSEL	KS-86-0099	BSA,GOA	3
ORYONG NO. 501 LARGE STERN TRAWLER	KS-86-0123	BSA,GOA	1
ORYONG NO. 503 LARGE STERN TRAWLER	KS-86-0095	BSA,GOA	1
OYANG HO LARGE STERN TRAWLER	KS-86-0006	BSA,GOA	1*
PUNS YANG HO LARGE STERN TRAWLER	KS-86-0004	BSA,GOA	1
REEFER NO.5	LS-86-0098	BSA,GOA	3

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
CARGO/TRANSPORT VESSEL			
SALVIA LARGE STERN TRAWLER	KS-86-0103	BSA,GOA	1*
SHIN AN HO LARGE STERN TRAWLER	KS-86-0047	BSA,GOA	1
SHIN YANG HO LARGE STERN TRAWLER	KS-86-0122	BSA,GOA	1*
SUNFLOWER NO. 7 LARGE STERN TRAWLER	KS-86-0002	BSA,GOA	1
TAE BAEK HO LARGE STERN TRAWLER	KS-86-0042	BSA,GOA	1
TAE YANG NO. 12 CARGO/TRANSPORT VESSEL	KS-86-0081	BSA,GOA	3
YUYANG HO LARGE STERN TRAWLER	KS-86-0104	BSA,GOA	1*
***TAIWAN			
CHIEF DRAGON 101 MEDIUM STERN TRAWLER	TW-86-0001	BSA,GOA	1*
CHIEF DRAGON 737 MEDIUM STERN TRAWLER	TW-86-0055	BSA,GOA	1*
CHIEF PHOENIX 666 MEDIUM STERN TRAWLER	TW-86-0077	BSA,GOA	1*
FONG KUO NO. 132 LONGLINE FISHING VESSEL	TW-86-3124	PBS	1
FU PENG 1 LONGLINE FISHING VESSEL	TW-86-3110	PBS	1
GOLDEN DRAGON NO. 1 LARGE STERN TRAWLER	TW-86-0004	BSA,GOA	1*
HAI I 1 LONGLINE FISHING VESSEL	TW-86-3052	PBS	1
HIGHLY NO. 707 CARGO/TRANSPORT VESSEL	TW-86-0061	BSA,GOA	3
HO MEI NO. 1 LONGLINER/GILLNET	TW-86-3083	PBS	1
HORNG HSING	TW-86-3045	PBS	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
LONGLINE FISHING VESSEL			
HUI CHING NO. 1 LONGLINER/GILLNET	TW-86-3036	PBS	1
HUI FAH LONGLINE FISHING VESSEL	TW-86-3043	PBS	1
HWEI SHYANG 31 LONGLINE FISHING VESSEL	TW-86-3113	PBS	1
KUO ZONG 3 LONGLINE FISHING VESSEL	TW-86-3059	PBS	1
LUCKY STAR 767 MEDIUM STERN TRAWLER	TW-86-0076	BSA,GOA	1*
MIN HONG 31 LONGLINE FISHING VESSEL	TW-86-3071	PBS	1
RUEY FONG. 3 LONGLINE FISHING VESSEL	TW-86-3016	PBS	1
SHENG PENG 1 LONGLINE FISHING VESSEL	TW-86-3049	PBS	1
SHIN CHYUN NO. 7 LONGLINE FISHING VESSEL	TW-86-3120	PBS	1
SHIN TAI 7 LONGLINE FISHING VESSEL	TW-86-3111	PBS	1
SHIN YIH HANG NO. 21 LONGLINE FISHING VESSEL	TW-86-3121	PBS	1
SHIN YUAN SENG NO. 11 LONGLINER/GILLNET	TW-86-3057	PBS	1
SHYA SHENG LONGLINE FISHING VESSEL	TW-86-3014	PBS	1
SUR TON 1 LONGLINE FISHING VESSEL	TW-86-3019	PBS	1
TONG CHOU 7 LONGLINE FISHING VESSEL	TW-86-3064	PBS	1
TSAO FA LONGLINE FISHING VESSEL	TW-86-3122	PBS	1
YEN HORNG 1 LONGLINE FISHING VESSEL	TW-86-3005	PBS	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
YIH HSING LONGLINE FISHING VESSEL	TW-86-3044	PBS	1
YIH LIEN NO. 1 LONGLINE FISHING VESSEL	TW-86-3123	PBS	1
YING RUEY SHIANG 3 LONGLINE FISHING VESSEL	TW-86-3013	PBS	1
YUNG CHANG FU 1 LONGLINE FISHING VESSEL	TW-86-3094	PBS	1
***GOVERNMENT OF THE U.S.S.R.			
18 SYEZD VLKSM LARGE STERN TRAWLER	UR-86-0617	BSA,GOA WOC	1*
ALTAYSKIE GORY CARGO/TRANSPORT VESSEL	UR-86-0259	BSA,GOA WOC	3
AMURSKIY BEREG CARGO/TRANSPORT VESSEL	UR-86-0750	BSA,GOA WOC	3
AMURSKIY BEREG CARGO/TRANSPORT VESSEL	UR-86-0750	BSA,GOA WOC	3
ARMENIYA LARGE STERN TRAWLER	UR-86-0016	BSA,GOA WOC	1*
BAGANOVO LARGE STERN TRAWLER	UR-86-0758	BSA,GOA WOC	1*
BEREG MECHTY CARGO/TRANSPORT VESSEL	UR-86-0753	BSA,GOA WOC	3
BEREG NADEZDY CARGO/TRANSPORT VESSEL	UR-86-0754	BSA,GOA WOC	3
CHUKOTSKYI BEREG CARGO/TRANSPORT VESSEL	UR-86-0749	BSA,GOA WOC	3
CHUKOTSKYI BEREG CARGO/TRANSPORT VESSEL	UR-86-0749	BSA,GOA WOC	3
DRUZHBA USSR-GDR LARGE STERN TRAWLER	UR-86-0221	BSA,GOA WOC	1*
KARGAT LARGE STERN TRAWLER	UR-86-0198	BSA,GOA WOC	1*
KHRUSTALNYI BEREG CARGO/TRANSPORT VESSEL	UR-86-0732	BSA,GOA WOC	3

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
KHRUSTALNYI BEREG CARGO/TRANSPORT VESSEL	UR-86-0732	BSA,GOA WOC	3
KORENGA LARGE STERN TRAWLER	UR-86-0215	BSA,GOA WOC	1*
MRAMORNYI LARGE STERN TRAWLER	UR-86-0713	BSA,GOA WOC	1*
MYS CHAIKOVSKOGO LARGE STERN TRAWLER	UR-86-0229	BSA,GOA WOC	1*
MYS EGOROVA LARGE STERN TRAWLER	UR-86-0097	BSA,GOA WOC	1*
MYS ELAGINA LARGE STERN TRAWLER	UR-86-0165	BSA,GOA WOC	1*
MYS KURILSKIY LARGE STERN TRAWLER	UR-86-0711	BSA,GOA WOC	1*
MYS KUZNETSOVA LARGE STERN TRAWLER	UR-86-0211	BSA,GOA WOC	1*
MYS LAZAREVA LARGE STERN TRAWLER	UR-86-0013	BSA,GOA WOC	1*
MYS OREKHOVA LARGE STERN TRAWLER	UR-86-0017	BSA,GOA WOC	1*
MYS OTRADNYI LARGE STERN TRAWLER	UR-86-0073	BSA,GOA WOC	1*
MYS TAIMYR LARGE STERN TRAWLER	UR-86-0166	GOA WOC	1*
OSTROV KARAGINSKIY CARGO/TRANSPORT VESSEL	UR-86-0255	BSA,GOA WOC	3
OSTROV KARAGINSKIY CARGO/TRANSPORT VESSEL	UR-85-0255	BSA,GOA WOC	3
OSTROV LISYANSKOGO CARGO/TRANSPORT VESSEL	UR-86-0254	BSA,GOA WOC	3
OSTROV LISYANSKOGO CARGO/TRANSPORT VESSEL	UR-86-0254	BSA,GOA WOC	3
OSTROV SHOKALSKOGO CARGO/TRANSPORT VESSEL	UR-86-0257	BSA,GOA WOC	3
OSTROV SHOKALSKOGO CARGO/TRANSPORT VESSEL	UR-86-0257	BSA,GOA WOC	3

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
OSTROV USHAKOVA CARGO/TRANSPORT VESSEL	UR-86-0258	BSA,GOA WOC	3
SAJANSKIE GORY CARGO/TRANSPORT VESSEL	UR-86-0262	BSA,GOA WOC	3
SAKHALINSKIE GORY CARGO/TRANSPORT VESSEL	UR-86-0261	BSA,GOA WOC	3
SULAK FACTORY SHIP	UR-86-0238	BSA,GOA WOC	1*
TAEJNYI BEREG CARGO/TRANSPORT VESSEL	UR-86-0770	BSA,GOA WOC	3
TRUSKAVETS LARGE STERN TRAWLER	UR-86-0559	BSA,GOA WOC	1*
TYMOVSK LARGE STERN TRAWLER	UR-86-0046	BSA,GOA WOC	1*
VERES MECHTY CARGO/TRANSPORT VESSEL	UR-86-0759	BSA,GOA WOC	3
VOSTOCHNYI BEREG CARGO/TRANSPORT VESSEL	UR-86-0761	BSA,GOA WOC	3
ZVEZDNYI BEREG CARGO/TRANSPORT VESSEL	UR-86-0728	BSA,GOA WOC	3
USSURIISKAIA TAIGA CARGO/TRANSPORT VESSEL	UR-86-0782	BSA,GOA,WOC	3

[FR Doc. 85-29179 Filed 12-5-85; 10:10 am]

BILLING CODE 3510-22-C

Reader Aids

Federal Register

Vol. 50, No. 235

Friday, December 6, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

49341-49504	2
49505-49664	3
49665-49824	4
49825-49918	5
49919 50156	6

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

5414	49665
5415	49825
5416	49827

Executive Orders:

12345 (Amended by EO 12539)	49829
12539	49829

4 CFR

6	49505
8	49505
9	49505
30	49505
33	49505
51	49505
52	49505
75	49505
82	49505

7 CFR

6	49919
226	49341
404	49505
408	49505
409	49505
411	49505
413	49505
415	49506
416	49920
417	49506
418	49506
419	49506
423	49507
427	49506
428	49513
429	49506
430	49506
433	49518
439	49505
800	49667
907	49343
959	49831
971	49831
989	49831
991	49831
1965	49832
1002	49674
1004	49674
1540	49524

Proposed Rules:

210	49933
225	49933
226	49933
440	49854
1032	49395
1941	49395
1943	49395
1980	49395

8 CFR

211	49921

9 CFR

77	49922
92	49344

Proposed Rules:

71	49937
80	49937
92	49702

10 CFR

440	49912

12 CFR

227	49524
563	49345
564	49524

Proposed Rules:

556	49937
571	49940

13 CFR

120	49832

14 CFR

39	49349-49351, 49832, 49833, 49923
71	49353, 49528, 49529
95	49674

Proposed Rules:

39	49858, 49944, 49945
71	49704, 49902

16 CFR

13	49834, 49835
305	49679

17 CFR

210	49529
229	49529
239	49529
276	49835
250	49354

Proposed Rules:

1	49859
250	49705

18 CFR

2	49679
32	49924
33	49924
34	49924
35	49924
36	49924
45	49924
101	49924
260	49534
284	49359, 49371, 49534
292	49924
375	49924

381 49924

20 CFR

404 ..... 50068, 50118
416 50118

Proposed Rules:

404 ..... 49397, 49558

21 CFR

172 49535
173 ..... 49535, 49684
175 ..... 49535, 49684
176 49684
178 49684
181 49535
184 49535
193 49687
310 49371
510 ..... 49372, 49537
520 ..... 49372, 49537, 49840
522 ..... 49372, 49840
524 ..... 49372, 49840
555 ..... 49372, 49924
558 ..... 49372, 49840
561 49687

Proposed Rules:

163 ..... 49398, 49405
201 49947
343 49409
357 49409

22 CFR

514 49373

Proposed Rules:

41 49705

23 CFR

658 49688

Proposed Rules:

1325 49409

24 CFR

232 49538
235 49538
300 49842

29 CFR

1 49822
2642 49539

Proposed Rules:

1910 49410

30 CFR

901 49541
904 49374
906 49924
915 49925
936 49376
944 49542
950 49544

31 CFR

Proposed Rules:

357 49412

32 CFR

54 49927
78 49930
828 49688
880 49688

33 CFR

110 49843
165 49844
117 49550

Proposed Rules:

166 49861
167 49861

37 CFR

304 49551

39 CFR

10 ..... 49387, 49689
111 49689

40 CFR

52 49389
180 49690

Proposed Rules:

60 49442
122 49904
124 49904
125 49904
141 49423
180 49705
271 ..... 49561, 49947, 49949
799 49863

41 CFR

101-40 ..... 49551, 49845

42 CFR

52a 49692
412 49930
432 49389
433 49389

43 CFR

Proposed Rules:

431 49563

44 CFR

64 49390

Proposed Rules:

67 49951
205 49959

45 CFR

96 49552
305 49392

46 CFR

Proposed Rules:

38 49563
151 49563

47 CFR

68 49930
73 ..... 49392, 49553
87 49554
97 49555

Proposed Rules:

43 49423
73 ..... 49426-49428, 49565, 49566, 49707, 49863

48 CFR

Proposed Rules:

31 49662
5242 43819
5252 49819
5350 49708

49 CFR

90 49930
171 49393
173 49849
175 49393
391 49849

Proposed Rules:

171 49866
173 49866
177 49866
178 49866
180 49866
192 ..... 49429, 49575
195 49429
1039 49576

50 CFR

20 49695
216 49696
611 49852
652 ..... 49852, 49931
671 49853
675 49852

Proposed Rules:

14 49709
17 ..... 49868, 49967, 49970
18 49577
20 49870
651 49582
663 49590

LIST OF PUBLIC LAWS

Last List December 5, 1985

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S.J. Res. 139/Pub. L. 99-165

To designate the week of December 1, 1985, through December 7, 1985, as "National Home Care Week". (Dec. 3, 1985; 99 Stat. 940; 1 page) Price: $1.00

H.R. 505/Pub. L. 99-166

Veterans' Administration Health-Care Amendments of 1985 (Dec. 3, 1985; 99 Stat. 941; 20 pages) Price: $1.00

S. 1042/Pub. L. 99-167

Military Construction Authorization Act, 1986 (Dec. 3, 1985; 99 Stat. 961; 40 pages) Price: $1.00

S.J. Res. 195/Pub. L. 99-168

To designate the week of December 1, 1985, through December 7, 1985, as "National Temporary Services Week". (Dec. 3, 1985; 99 Stat. 1001; 1 page) Price: $1.00

20

9202