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Federal Register

Tuesday
May 6, 1986

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

Selected Subjects

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Selected Subjects

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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.

WASHINGTON, DC

WHEN: May 15; at 9 am.

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

RESERVATIONS: Laurence Davey, 202-523-3517

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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.

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Presidential Documents

Title 3—

The President

Proclamation 5470 of April 30, 1986

Fair Housing Month, 1986

By the President of the United States of America

A Proclamation

The year 1986 marks the eighteenth anniversary of the passage of title VIII of the Civil Rights Act of 1968, commonly referred to as the "Fair Housing Act," declaring it a national policy that housing throughout the United States should be made available to all citizens on the basis of equality and fairness.

The Federal Fair Housing Act prohibits discrimination in housing on the basis of race, color, religion, sex, or national origin.

Fairness is the foundation of our way of life and reflects the best of our traditional American values. Invidious discriminatory housing practices are abhorrent to the American sense of fair play.

In this eighteenth year since the passage of the Fair Housing Act, Americans should continue to work together to uphold the Fair Housing Act and the principle of equal opportunity on which it is based.

The Congress, by Senate Joint Resolution 303, has authorized and requested the President to issue a proclamation designating the month of April 1986 as "Fair Housing Month."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim April 1986 as Fair Housing Month.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-10294
Filed 5-5-86; 10:51 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5471 of May 1, 1986

Loyalty Day, 1986

By the President of the United States of America

A Proclamation

The freedom of thought and action we Americans enjoy today seems as natural as the air we breathe. But there is a danger we may take this freedom for granted. We must never forget it was bought for us at a great price. The brave and resourceful Americans whose sacrifices gained our Independence and preserved it for more than 200 years against formidable foes have set an example of unflinching loyalty to the ideal of liberty and justice for all.

Our great Nation is at peace, but peace demands of us a commitment to defend the system of government that has so effectively ensured our freedoms. To encourage our vigilance and so that we may rededicate ourselves to sustaining the great American ideals, the Congress, by joint resolution approved July 18, 1958 (72 Stat. 369, 36 U.S.C. 162), has designated May 1 of each year as "Loyalty Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 1, 1986, as Loyalty Day and call upon all Americans and all patriotic, civic, fraternal, and educational organizations to observe that day with appropriate ceremonies. I also call upon government officials to display the flag of the United States on all government buildings and grounds on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-10295
Filed 5-5-86; 10:52 am]
Billing code 3195-01-M

Rules and Regulations

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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 315

Model Rules for Implementation of the Equal Access to Justice Act

AGENCY: Administrative Conference of the United States.

ACTION: Issuance of Final Revised Model Rules.

SUMMARY: The Chairman, Administrative Conference of the United States, issues final revised model rules to implement the Equal Access to Justice Act, Pub. L. 96–481, 94 Stat. 2325, as amended by Pub. L. 99–80, 99 Stat. 183. The Act provides for the award of attorney fees and other expenses to parties who prevail over the Federal government in certain administrative and court proceedings. These revised model rules, which reflect the changes in the law made by Pub. L. 99–80, are designed to assist agencies in adopting or amending their own regulations for implementation of the Equal Access to Justice Act. Where appropriate, alternative provisions suitable for use by contract appeals boards are included; they are displayed in smaller type.

FOR FURTHER INFORMATION CONTACT: Mary Candace Fowler, Staff Attorney, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037; (202) 254–7065.

SUPPLEMENTARY INFORMATION: On November 6, 1985, the Chairman of the Administrative Conference of the United States published draft revised model rules for implementation of the Equal Access to Justice Act in Federal agency proceedings. [50 FR 46250 (November 6, 1985)]. The Act provides for the award of attorney fees and other expenses to certain parties who prevail over Federal government in court cases and adversary administrative proceedings. Prevailing parties may receive awards if they meet the Act's eligibility standards (which set ceilings on the net worth and number of employees of parties) and if the government's position was not substantially justified.

After considering comments received on the draft, the Chairman is now issuing final revised model rules. These rules are intended to help fulfill the Chairman's responsibility, assigned by Congress under the Equal Access to Justice Act, to consult with agencies establishing uniform procedures for handling applications for fee awards in their own proceedings. 5 U.S.C. 504(c)(1), Pub. L. 96–481, 94 Stat. 2325, as amended by Pub. L. 99–80, 99 Stat. 183. The Chairman first issued model procedural rules for agencies in 1981. 46 FR 32900 (June 25, 1981), reprinted in Administrative Conference of the U.S., *Federal Administrative Procedure Sourcebook* (Office of the Chairman, 1985), at 353–84.

Pub. L. 99–80, enacted August 5, 1985, reauthorized the Act, which had expired on September 30, 1984. It also made several amendments, including the following:

1. Net worth ceilings for eligible parties have been raised to $2,000,000 for individuals and $7,000,000 for partnerships, corporations, and other entities;

2. Units of local government that fall within the ceilings on net worth and number of employees have been made eligible for fee awards;

3. The position of the government that must be substantially justified has been specifically defined to include the underlying action or failure to act on which the proceedings is based as well as the position in litigation; and

4. Contract dispute proceedings before agency contract appeals boards have been included in the proceedings covered by the Act.

The draft revised model rules were prepared with two purposes in mind: to assist agencies in amending their Equal Access to Justice Act procedures to reflect these statutory changes, and to adapt the existing rules as necessary for use by agency contract appeals boards. The draft revised model rules noted that application of the Act to contract appeals proceedings raises some problems that may require specialized treatment. These issues are discussed in the section-by-section analysis below, and the model rules contain italicized alternative contract appeals board provisions where appropriate.

The Office of the Chairman received twelve comments on the draft rules, most from federal agencies and most concerning various issues related to implementation of the Act by contract appeals boards. We have made some changes to the draft in response to the comments; both these and our decisions not to adopt other suggestions are discussed below.

One commenter, James McQuiston, of McQuiston Associates, submitted an entirely redrafted set of rules. Significant substantive issues raised by these rules are discussed in connection with the relevant rule provisions. To the extent that the changes made by this alternative set of rules are organizational or stylistic, we will not address them individually. Agencies have worked with their existing rules, most of which are closely based on the ACUS model rules, for over three years. To propose a wholesale redrafting and reorganization at this time would be unnecessarily burdensome and confusing.

As a preliminary matter, we would like to set forth our expectations of how agencies can fulfill the statutory requirement of consultation with the ACUS Chairman. Agencies that publish proposed rules for comment may simply notify us of the publication of their proposals; the Chairman will then provide any suggestions by filing comments. Agencies that intend to publish final rules without providing a notice and comment period should send a draft to the Office of Chairman for review and comment before publication if their rules depart significantly from the model; we will expedite this review to the extent possible.

Of course, as with the original model rules, agencies will not be bound to follow either the model rules or the suggestions made by the Chairman, whose authority is consultative only. However, to promote the uniformity of agency procedure contemplated by the Equal Access to Justice Act and to conserve their own time and resources, we strongly encourage agencies to follow the model to the greatest extent possible.

Section-by-Section Analysis

Subpart A—General Provisions

The basic changes recommended in this subpart to conform the model rules to the provisions of the amended Equal Access to Justice Act (such as deletion of references to the agency's position "as a party" and revision of the net worth ceilings on eligibility) were not controversial, and we have adopted them. However, some sections of the subpart provoked extensive comment.

Applicability: Comments from the Civil Division of the Department of Justice raised substantial questions about the draft rules' discussion of applicability and retroactivity of the new provisions of the Act. We proposed that all cases in which fee applications were pending on August 5, 1985 be treated as "pending" on the date of enactment of Pub. L. 99–80, and thus covered by the amended Act rather than by the old Act (under its savings clause for cases pending on September 30, 1984). The Civil Division, however, has pointed out legislative history that casts doubt on our interpretation. During debate in the House of Representatives before passage of the Act, Representative Kastenmeier stated:

> I would like to clarify the effective date provisions of H.R. 2378 and the relationship of these provisions with the original Act. Cases which were pending on October 1, 1984, including fee application proceedings would be governed by the original act, provided that the time to file the fee application expired before the date of enactment of this bill. This bill would apply to any case pending on October 1, 1984, and finally disposed of before the date of enactment of this bill, if the time for filing an application for fees and other expenses had not expired as of such date of enactment. 131 Cong. Rec. H4762 (June 24, 1985).

Relevant language also appears in the House Report on H.R. 2378: "The changes which are made by H.R. 2378 which merely clarify existing law are retroactive, and apply to matters which were pending on, or commenced on or after October 1, 1981. However, changes which are made by H.R. 2378 and which expand or otherwise change existing law shall take effect on the date of enactment and shall apply to matters pending on or commenced after that date." H.R. Rep. 99–120, 99th Cong., 1st Sess. 11 (1985). See also *Id.* at 21. This distinction, the Civil Division comments argue, would be meaningless if all provisions of the new act applied retroactively to cases in which only the fee application remained pending on the date of enactment. *Bradley* v. *School Board* 416 U.S. 696 (1974), which stands for the proposition that a court will apply the law in effect at the time it makes its decision (and itself involved application of an attorneys' fee statute to a case in which only the fee application was pending), makes an explicit exception for situations in which legislative history indicates that Congress did not intend a retroactive application.

We are persuaded that the provisions of the new Act (and the amended rules) as a whole should not apply to cases in which only fee applications remained pending on August 5, 1985. Instead, as envisioned by the House Report, those provisions that expand or change existing law (such as the expanded eligibility ceilings) should apply to cases on which the substantive portion of the case was still pending on the date of enactment, or the time for filing a fee application has not expired on that date, and to those other classes of cases explicitly mentioned in Pub. L. 99–80. We do not believe it is necessary to revise § 315.102 of the draft model rules, which tracks the language of Pub. L. 99–80, to accommodate this change in interpretation. Most agencies had few, if any, fee applications pending on August 5; these agencies will surely find it easier to inform affected parties directly that the old rules will continue to apply than to adopt a special rule covering the cases. Even agencies with a larger application volume, such as the NLRB, may prefer to follow this course. If not, such agencies can simply retain their old rules for as long as necessary while also adopting new rules for newer cases.

We note, in this connection, that the definition of "position of the agency" to include the underlying position as well as the litigation position is explicitly described in the House Report as a clarifying amendment:

> Part of the problem in implementing the Act has been that agencies and courts are misconstruing the Act. Some courts have construed the "position of the United States" which must be "substantially justified" in a narrow fashion which has helped the Federal Government escape liability for awards. H.R. 2378 clarifies both of those points. When the escape clause was originally written, it was understood that "position of the United States" was not limited to the government's litigation position but included the action—including agency action—which led to the litigation. However, courts have been divided on the meaning of "position of the United States." H.R. 2378 clarifies that the broader meaning applies.

H.R. Rep. 99–120, at 9 (footnotes omitted). In *Russell* v. *National Mediation Board*, 775 F.2d 1284 (5th Cir. 1985), the Fifth Circuit agreed that the definition of "position of the agency" clarified the original Act and thus should apply even to cases in which only a fee application remained pending. While we do not propose to treat this issue explicitly in the rules, we recommend that agencies with a backlog of fee applications pending on August 5, 1985, give careful consideration to the distinction between clarifying amendments and modifying amendments in disposing of these applications.

The Agriculture Board of Contract Appeals has raised a question as to what constitutes a timely filed application dismissed for lack of jurisdiction under the special retroactive applicability clause for contract appeals. Would a general request for fees in the initial pleading, denied by the Board in its substantive order in the case, qualify? This is a difficult question. A potential applicant that stated its intent to file for fees and was explicitly informed (by denial in an agency order) that such an application would not be entertained would in all probability not have bothered to file such an application. However, Pub. L. 99–80 contemplate that an "application" within the terms of the Act must have been filed: "[The Act] shall apply to any adversary adjudication pending on or commenced on or after October 1, 1981, in which applications for fees and other expenses were timely filed. . . ." Pub. L. 99–80, sec. 7(c). We suggest that the boards require that a formal application have been filed. An applicant who feels unfairly disadvantaged by this interpretation may wish to file under the new law and take the issue before the appellate court.

Proceedings Covered: The Agriculture Board of Contract Appeals has also suggested a clarifying change to § 315.103, identifying the proceedings to which the Act applies. For contract appeals, the Board suggests the rules refer to "final decisions of contracting officers" rather than simply "decisions" made under the relevant statutory provisions. We have added the words "of contracting officers," which we agree are helpful. However, we have not added the word "final," since the Contract Disputes Act refers only to "decisions." Thus the term "final" could be more confusing than clarifying.

Eligibility: Two commenters made suggestions on the eligibility provisions of § 315.104. The Armed Services Board of Contract Appeals said the definition of "party" should follow existing Board rules; however, since the EAJA explicitly defines a party and the rules follow this definition, we cannot adopt this suggestion. The Postal Service Board of Contract Appeals noted that the word "proceeding" may be ambiguous for contract appeals, and

that in these cases eligibility should be determined as of the time the appeal was filed, rather than the claim. We agree with this interpretation, which parallels that for other proceedings, in which the commencement of the formal litigation stage is the point at which eligibility is measured. We have included appropriate alternate language for contract appeals boards in the rules.

We received no comments or suggestions on how to determine the net worth of units of local government (other than an informal comment to the effect that housing authorities, mentioned in our discussion of this issue, are virtually always independent of individual local municipalities). This difficult issue will have to be resolved on a case-by-case basis, in the context of concrete fact situations. We will monitor developments in this area in order to circulate any useful information that becomes available.

Standards for Awards: Comments on § 315.105, standards for awards, concerned two points. Some Boards of Contract Appeals suggested elimination of the "burden of proof" sentence in this rule, suggesting it is unnecessary, confusing, and unwarranted by amendments to the Act. This language appeared in the original model rules, and we see no reason to eliminate it now. However, we agree that the sentence may be ambiguous without its original ending explicitly linking it to the substantial justification determination rather than other issues, and we have revised the sentence to resolve this problem. One commenter objected to the term "agency counsel"; as explained in our original model rules, we selected this term to distinguish between the agency as a party to the proceeding and the agency as a decisionmaking body. If a clearer term will be workable in the context of contract appeals, the boards are invited to use it.

A larger issue concerns our decision to delete the phrase "reasonable in law and fact" from our rules. The Civil Division of the Justice Department and the General Counsel of the Securities and Exchange Commission have expressed doubts about whether the standard to be applied in determining substantial justification must be, as the House Report on H.R. 2378 suggests, "more than reasonable." The SEC General Counsel specifically suggests that we retain the previous language.

It is true that statements on the floor of the House of Representatives question the accuracy of certain parts of the discussion of the substantial justification standard in the House Report, particularly its suggestion that administrative actions found to be arbitrary and capricious or unsupported by substantial evidence can virtually never be substantially justified. These statements, however, do not directly question the report's assertion that the correct test, as applied in several cited court cases, is "more than mere reasonableness." And the fact that the statutory language itself was not changed is not dispositive, for the House report language makes clear that it is intended to clarify the committee's preference for one of two interpretations of the existing language.

One the other hand, the floor statements inevitably raise some questions about Congress' endorsement of the substantial justification section of the report, and the case law remains unsettled. In *Russell* v. *National Mediation Board*, the fullest treatment of the issue since passage of the new law, the Fifth Circuit decided to continue applying the "reasonable in fact and law" standard in the face of what it saw as irreconcilable inconsistencies in the legislative history of Pub. L. 99–80. On the other hand, the D.C. Circuit has continued to apply its standard of "more than mere reasonableness." *Massachusetts Fair Share* v. *LEAA*, 776 F.2d 1066 (D.C. Cir. 1985). And the SEC General Counsel notes that, in any event, "reasonable in fact and law" may itself be "more than mere reasonableness."

The underlying difficulty is that all the definitions of "substantially justified" are themselves no more concrete and specific than the term itself. Inevitably, the determination of what is substantially justified must be made in the context of the individual case. We are not certain that the "reasonable in fact and law" formulation reflects Congressional intent, nor can we predict whether a consensus test will emerge from consideration of this question by additional circuits. We suggest that, in making individual determinations, agencies and their adjudicative officers should ensure that they are looking closely at the government's position, while looking to the courts (as we will) for further guidance.

In one other point related to this section, the Civil Division of the Justice Department said that fee awards should be apportioned to cover only the amount of time litigating against unjustified positions. While we agree with the spirit of this proposition, we think it must be applied on a case-by-case basis, and thus does not lend itself to an unambiguous and helpful model rule. For example, courts and agencies might reach very different conclusions about what fees are awardable and what are not when the "justified" and "unjustified" positions are related to two separate claims combined in the same case, to technical and substantive defenses, or to alternative substantive legal theories arising out of the same facts. See *Hensley* v. *Eckerhart*, 461 U.S. 424 (1983). We are not aware that agencies have had any significant problems in dealing with such cases as they arise, and we would prefer to avoid adding a rule that may create more confusion than clarity in this area.

Fees and Expenses: Three commenters suggested changes to § 315.106, on allowable fees and expenses, which we had not proposed to amend. The Department of Transportation Board of Contract Appeals suggests that fees should be limited to reimbursement of actual fees incurred, and should not be determined by reference to customary fees. We do not agree, as we explained in adopting our original model rules, and we believe the law is clear that fee awards are not limited to reimbursement. 5 U.S.C. 504(b)(1)(A); 28 U.S.C. 2412(d)(2)(A).

The Armed Services Board of Contract Appeals suggests addition of a sentence stating that *pro se* litigants may not recover attorney fees. However, we believe this sentence might imply, inaccurately, that such litigants may not recover expert witness fees and other expenses. Moreover, we continue to believe, as discussed in our original model rules, that the eligiblity of *pro se* litigants should be determined on a case-by-case basis; in any event, this issue has not often arisen in agency proceedings.

James McQuiston suggests listing in this rule twelve factors for evaluating attorney fee requests, first formulated in *Johnson* v. *Georgia Highway Express*, 488 F. 2d 714 (5th Cir. 1974), and widely applied in civil rights and other fee cases. The rule would require discussion of each relevant factor by agencies making awards. The 11th Circuit requires courts determining EAJA petitions to apply these factors, even though the Act includes its own standards for determining an appropriate fee, and some other courts have referred to *Johnson* in evaluating EAJA fee requests. *Florida Suncoast Villa* v. *United States*, 776 F. 2d 974 (11th Cir. 1985); *see* also, *e.g.*, *Kennedy* v. *Heckler*, 598 F. Supp. 124 (D. Md. 1984); *Belton* v. *Commissioner of Internal Revenue*, 595 F. Supp. 494 (D.D.C. 1984). However, judicial understanding of the *Johnson* factors and of other approaches to calculating fees (such as the lodestar concept applied in the D.C. Circuit, see *Copeland* v. *Marshall*, 641 F. 2d 880 (D.C. Cir. 1980)) is continually evolving,

and incorporation of the exact formulation of *Johnson* into the model rules will fail to take these developments into account. For example, the Supreme Court has recently said that the starting point for fee determinations should be a reasonable number of hours worked times a reasonable fee, with other factors considered after this basic calculation. *Hensley* v. *Eckerhart*, 461 U.S. 424 (1983). This starting determination is very close to the standard articulated by Congress in the Act: "[t]the amount of fees . . . shall be based upon prevailing market rates for the kind and quality of the services furnished" up to the limit of $75 per hour. 5 U.S.C. 504(b)(1)(A); 28 U.S.C. 2412(d)(2)(A).

The existing model rule requires consideration of the factors clearly relevant to the determination and permits consideration when relevant of other, unspecified factors, such as those identified in *Johnson*. Agency adjudicative officers have had no apparent problems with applying existing law on the calculation of attorney fees in an informal way, considering the difficulty of the issues, the skill of the attorney, and similar factors in determining the appropriateness of the hours billed and the hourly rate requested. We believe the *Johnson* factors will continue to inform the work of the adjudicative officers (and agency reviewers), as will other developments in attorney fee case law, without the need for detailed rules that would probably require frequent amendment.

Subpart B—Information Required from Applicants

Two significant—and related—issues in this subpart provoked comment: the proper handling of bifurcated contract appeals board proceedings, in which government liability is determined first and only then (assuming there is liability) are damages assessed, and the meaning of "final disposition."

Bifurcated Proceedings: As to this issue, commenters generally favored concluding both the liability and damages portions of a case before deciding fee applications; the Civil Division of the Justice Department pointed out that the government's position cannot always be accurately evaluated when only liability has been determined. The Veterans' Administration Board of Contract Appeals, on the other hand, suggested that it would generally work better to decide applications at the end of the liability phase; however, the Board believed the decision should be made on a case-by-case basis.

We believe that the bifurcation problem does not require a special amendment to § 315.204 of the rules. We agree with most of the commenters that in the ordinary case, fee applications can be more appropriately handled after the determination of damages (whether this determination is made by settlement or litigated). But we also agree with the VA Board that the issue should be determined on a case-by-case basis. The legislative history of the original Act clearly contemplates that there may be cases in which a court or agency may entertain an application before conclusion of the entire case. H.R. Rep. 96–1434, 96th Cong., 2d Sess. 21–22 (1981). While these cases are likely to be rare (particularly in light of the new statutory provision prohibiting agencies from finally deciding applications in cases where a government court appeal of the merits is pending), we think that agencies, like the courts, should have discretion to decide such applications when they believe the circumstances warrant it, but should not bind themselves to do so (or not to do so) by a categorical rule.

Final Disposition: Two commenters—the Transportation and Armed Services Boards of Contract Appeals—said that final disposition, in the context of contract appeals, should occur when the time for appealing the decision has expired. This approach parallels the new language in the court provisions of the Act. The commenters noted that either the contractor or the government has 120 days to appeal the final decision of a board of contract appeals. This period is longer than that for appeal from most administrative agency decisions, and the situation is complicated by the fact that the government as well as the contractor may appeal. (In most administrative proceedings covered by EAJA, of course, there is no agency appeal because the agency would be appealing its own decision.)

The point is well taken. While the contractor would be free to file its application earlier in any event, realistically, the board is unlikely to take final action on a fee application when the government might still appeal the substantive decision. (Anticipating this problem, Pub. L. 99–80 added a provision to the Act prohibiting agencies from deciding fee applications in proceedings where the government has appealed.) There is no point in requiring the applicant to meet an arbitrary filing deadline of 30 days after issuance of the decision if the agency will not consider the application for an additional 90 days.

While the same considerations will not apply in most other agency proceedings, where the government will not appeal, we believe the best approach is to modify the definition of "final disposition" for all proceedings. This will provide consistency among agency proceedings as well as with court cases, and will avoid the confusion that sometimes arises as to whether an application must be filed with an agency to preserve rights even though some portion of a case is being appealed to the courts.

Other Issues: Commenters raised a few smaller points about this subpart. The Agriculture Board of Contract Appeals suggested that the applicant "certify" its net worth in § 315.201(b). We believe the verification requirement of § 315.201(e), which applies to every portion of the application, is adequate. The DOT Board of Contract Appeals said that applicants should be permitted to file EAJA applications with their initial contract appeals, so that relevant testimony may be taken at the trial on the merits. It would be possible for a contractor to include a generalized statement of intent to seek fees, along with a statement of net worth and an allegation that the government's underlying position is not substantially justified, in its initial contract appeal. Realistically, however, this will not save much time or effort. As to substantial justification, the testimony on the merits will be the relevant testimony. As to the appropriate amount of any award (the item which, according to the Civil Division of the Justice Department, is most likely to prompt a dispute requiring further exploration of facts), the necessary information will not be available until after the trial on the merits. So the only thing that could be accomplished would be to take testimony on the eligibility of a potential applicant who may not even prevail in the underlying proceeding.

We have revised § 315.203, concerning documentation of fees and expenses, in response to a suggestion from the General Counsel's Office of the Department of Transportation that the existing language could be read to imply that adjudicative officers may only require further substantiation of expenses and not of attorney fees. This is not the intent of the rule.

Subpart C—Procedures for Considering Applications

Comments on this subpart of the rules focussed largely on their suitability for use by contract appeals boards. One

general comment, filed by the DOT Board of Contract Appeals, noted that the boards already have general rules on filing and service of pleadings and do not need separate EAJA rules. We believe there may be some benefit in having separate rules clearly stating EAJA procedure. To the extent, however, that existing board rules clearly cover the necessary procedures, they can be incorporated by reference in lieu of separate rules.

James McQuiston proposed a complete restructuring of the procedure for handling fee applications. He believes Congress' provision that the final decision be made by the agency, coupled with its direction that the substantial justification determination be made on the existing record, describes something other than a quasi-judicial procedure. Instead, he proposes that agency adjudicative officers function more like agency contracting officers, determining fee applications based on an informal review of the file and, where appropriate, negotiating a settlement with the applicant on the agency's behalf. The adjudicative officer's decision would then be subject to approval by an agency supervisor. Under this system, there would be no need for responsive pleadings (although the agency litigators could submit comments on the application if they chose to), nor would the applicant be required to serve copies of its application on agency litigators or any other parties to the proceeding. Similarly, no agency review process, other than the approval of the supervisor mentioned above, is provided for.

Mr. McQuiston contends that the award of fees ("negotiating a fee for services" in his words) is essentially an executive act, very similar to awarding a contract, rather than a judicial one. He argues that this approach will be much faster and will avoid the unfairness of having an agency adjudicate a dispute to which it is a party.

We do not believe this to be a better approach. The role of an agency official deciding what is a reasonable price to pay for goods or services provided directly to the agency by contractors is not clearly analogous to the role of the adjudicative officer in determining the agency's potential liability for services provided by a private attorney to a third party, particularly when a concept of agency fault enters into the decision. While an adjudicative officer might possibly function in such an "executive" capacity, this would be a very unaccustomed and probably difficult role for such an officer. Moreover, Pub. L. 99–80 and its legislative history reveal no Congressional intent to eliminate pleadings and adversary proceedings as a method of focussing the issues for the adjudicative officer, though Congress was certainly aware that this is the procedure in common use.

It seems more rational to keep the process for determining fee applications in administrative proceedings as parallel as possible to the procedure in court cases, and to preserve fee proceedings as an integral part of the proceeding in which they arose, rather than to create an entirely new procedure. While we agree that the proposed approach might save time, if administered with that goal in mind, we don't think that is the most important consideration. And we don't agree that changing the decision-making process from a quasi-judicial to an administrative one will remove a taint of unfairness. If anything, it exacerbates this problem, since the adjudicative officer as contracting officer would be explicitly charged with representing and advancing the interests of the agency in a way that the adjudicative officer as quasi-neutral arbiter is not. Accordingly, we have retained the basic approach of the original model rules.

Settlements: Two commenters objected to the requirement of § 315.305 that parties who reach settlement on attorney fees before an application is filed file their application with the proposed settlement. We have two reasons for retaining this provision, which we continue to think is a good one. First, Congress has explicitly instructed ACUS to report annually on fee awards in administrative proceedings under the Act. Information about the applicant and the proceeding, as well as the amount of the settlement, are necessary to provide a complete report. Second, this filing permits at least brief consideration by the adjudicative officer of information on the eligibility of the applicant, an extra step that seems appropriate where a waiver of sovereign immunity is involved. In many administrative proceedings, the adjudicative officer and/or the agency must approve settlements in any event, so the submission of information on matters such as eligibility would be a logical part of this process. If this is not the case in contract appeals, and the boards believe the filing of an application would be too cumbersome, we would still suggest that the boards request the settling parties to file some basic information including a statement of eligibility and the amount of the settlement on fees, if for no other reasons than to keep Congress informed.

Further Proceedings: Several commenters made suggestions about § 315.306. The DOT Board of Contract Appeals urged that the rule preserve a full opportunity for discovery by the government as well as the availability of full open hearings on all issues rather than confinement to the written record. The General Counsels of DOT and NASA also suggested amending the rule to clarify that discovery and even evidentiary hearings are still permissible as to issues such as eligibility and the amount of fees.

We believe the statute is clear that substantial justification determinations must be made on the written record. We also feel, in the interest of avoiding delay and expense, that it is appropriate to encourage proceedings on the written record whenever possible as to other issues. Accordingly, we have not adopted the suggestion of the DOT Board of Contract Appeals. We agree, however, that the rule could be clearer on the extent to which discovery and hearings are still permissible, and we have modified the rule accordingly.

The Agriculture Board of Contract Appeals suggested an amendment to indicate that the determination of when further proceedings are necessary is a judgement within the discretion of the adjudicative officer. We are not aware of any problems that have arisen over this issue under the existing regulation, nor of any disputes over the extent of further proceedings provided; thus we have not revised the rule. We agree, however, that this is essentially a discretionary determination, and would not object if an agency feels the need to say so explicitly.

Decision: This section raises the question of who is the "adjudicative officer" in contract appeals proceedings. The two comments we received addressing this point generally agreed with our original formulation, that whatever unit of the board made the first decision on the merits should be considered the "adjudicative officer." The Postal Service Board of Contract Appeals, however, went on to suggest that the "adjudicative officer" should not be limited to the particular presiding officer or panel that made the original decision, because this would unnecessarily limit flexibility in work allocation. We believe that agencies can properly assign EAJA petitions to new board members or panels where illness, retirement or other specific circumstances would prevent assignment to the original member or panel, and we have revised the rule to reflect this. However, the statute defines the "adjudicative officer" as "the

deciding official. . . who presided at the adversary adjudication;" thus the decisionmakers should be the same for the merits and the fee application whenever possible. Similiarly, where boards have relied on hearing examiners to take evidence, but not to make decisions, in contract disputes, the boards may wish to have these examiners recommend EAJA decisions; the examiners should not, however, actually *make* the EAJA decisions, since they were not the "deciding officials" on the merits. We repeat here our earlier suggestion, endorsed by the Armed Services Board of Contract Appeals, that boards may wish to use the term "presiding officer" to distinguish between officials authorized to make procedural rulings and those who must make the ultimate decisions.

Two other contract appeals boards oppose § 315.307's provision of a time limit (to be specified by the agency) for EAJA decisions, which they regard as unnecessary and not legally required. It is the position of the Administrative Conference that agency-established time limits or guidelines can be an effective way to reduce administrative delay. ACUS Recommendation 78–3, *Time Limits on Agency Actions*, 1 CFR 305.78–3. This provision of the model rules reflects that position.

Commenters from the Civil Division of the Department of Justice anticipated problems in determining which agency should pay when two or more are involved and recommended that the model rules resolve this question. For example, a contractor might file a claim under the Contract Disputes Act because it was required to pay wages higher than the contract rate, but the contracting officer may have been bound to impose the higher rate by a ruling or regulation of the Department of Labor. This particular example seems like one where the contracting officer could demonstate substantial justification, or at least special circumstances that would make an award unjust, so the issue might never arise. In any event, it is impossitlbe to predict and resolve every possible two-agency situation in advance. We believe these problems must be dealt with on a case-by-case basis, as they arise.

Agency Review: We received extensive comment on the question of who should be the "agency" which makes the final EAJA decisions in contract appeals board proceedings. Most of the commenters (including the Boards of Contract Appeals of the Department of Transportation, Postal Service, and Veterans Administration and Attorney Robert J. Robertory) strongly urged us to maintain the independence of the boards of contract appeals, noting the importance of that independence in the statutory scheme of the Contract Disputes Act. Comments submitted by Ronald Kienlen, Deputy Chief Trial Attorney with the Department of the Army, took the contrary position. He argued that the boards exercise authority delegated by agency heads, as circumscribed by the Contract Disputes Act. Authority to award fees under EAJA must also be delegated by the head of the agency *conducting* the proceeding (the litigating agency), and this authority is not subject to the Contract Disputes Act limitations. Congress could have authorized the boards explicitly to make awards, but instead merely stated that Contract Disputes Act proceedings were covered by the Act. Finally, the comments noted that, if Board decisions are final, the agency will have no right of appeal, even though the final decision is not its own.

These comments raise serious concerns. After careful consideration of them, of the statute, and of the legislative history, however, we have decided to stay with our original approach. Pub. L. 99–80 provides that the Act applies to "any appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 . . . before an agency board of contract appeals. . . ." The House Report on the legislation elaborates:

> Subsection (c) adds new language expressly making proceedings before agency boards of contract appeals covered by the Act, as are adversary adjudications. . . . The expansion of coverage in this provision is necessary to preserve the balance of alternative remedies for government contractors found in the Contract Disputes Act of 1978 (CDA), 41 U.S.C. 601–613. Under the CDA, the contractor may either bring his contract dispute before an agency board or file suit directly in the Claims Court. However, if eligible prevailing contractors can recover attorney fees only in the latter forum, there will be a disincentive to bring cases before the agency boards. Thus, unless a statutory modification occurs, the complete remedy for contract cases will be frustrated.
>
> In *Fidelity Construction Co.* v. *United States*, 700 F.2d 1379 (Fed. Cir. 1983), the court held that agency boards of contract appeals are without jurisdiction to award fees against the government under the Act. The *Fidelity* court reasoned that Congress must explicitly authorize an award of fees against the United States with specific statutory language. H.R. 2378 would legislatively overrule the result in *Fidelity* by providing statutory authority for attorneys fees.

Congress' intent to authorize the contract appeals boards themselves to award fees seems clear from this language. Moreover, Congress' obvious concern with maintaining the equivalence of contract appeals board and Claims Court remedies under the Contract Disputes Act argues strongly in favor of making contract appeals board decisions on EAJA applications the final agency decisions. The contracting agency does not review other decisions by the boards or by the Claims Court. Moreover, it would be neither efficient nor logical for the decision on whether the government's position in litigation was substantially justified to be made by an official (or body) that had no authority to decide (or review the decision in) the substantive case.

It is true that only the non-governmental party may appeal agency fee determinations under the Equal Access to Justice Act to the courts. In the usual agency situation, the agency would not need appeal rights since it would effectively be appealing its own decision—an obviously illogical outcome. By contrast, the contract appeals boards' decisions are ordinarily not reviewable by the litigating agency; instead, their decisions on the merits may be appealed to the Court of Appeals for the Federal Circuit (with the concurrence of the Attorney General). But the contract appeal situation is not unprecedented. Since passage of the original Act, the National Transportation Safety Board has made awards against the Federal Aviation Administration, and the Occupational Safety and Health Review Commission and the Federal Mine Safety and Health Review Commission have made awards against the Department of Labor. These awards were also unappealable, even though the litigating agency had no power of review over the decisions (the original Act provided for appeals by "parties," defined to exclude agencies). When it passed Public Law 90–80, Congress made no effort either to create court appeal rights or to give final authority for fee awards to the litigating rather than the deciding agencies in these cases.

We recommend, therefore, that the contract appeals boards' EAJA decisions be unreviewable by agencies, and alternate § 315.308 reflects this view. We note that the government will be able to raise this issue in court if it chooses to, since it can defend against a contractor's appeal of an EAJA decision by arguing failure to exhaust administrative remedies.

Other Issues: James McQuiston recommends amendment of § 315.309, on judicial review, to provide that parties who wish to appeal fee determinations may file a notice of appeal with the

agency, which will then transmit it to the court. Under the statute (as in other agency appeals), it is the responsibility of the dissatisfied party to appeal the decision; this responsibility extends, of course, to the filing of a notice of appeal with the proper court within the statutory time limit.

The DOT Board of Contract Appeals raised questions about § 315.310, concerning payment of awards. First, the Board states, section 13(a) of the Contract Disputes Act provides for payment of damages in substantive contract proceedings through 31 U.S.C. 724a, upon certification by a contract appeals board to the Comptroller General. EAJA awards should be handled the same way. Moreover, the agency should not be required to pay within 60 days, since it has 120 days to appeal the decision.

In each of these cases, the Equal Access to Justice Act provides explicitly for different treatment than the standard procedure in contract appeals. Under 5 U.S.C. 504(d), as amended by Pub. L. 99–80, "(f)ees and other expenses awarded under this subsection shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise." The new law specifically eliminated previous language permitting the payment of awards out of general funds for the payment of judgments against the United States. (Because of another provision of the original Act, Equal Access to Justice Act awards could not actually be paid out of these funds even before the passage of Pub. L. 99–80.) Similarly, awards made in contract appeals proceedings should be payable by the agency over which the applicant prevailed.

Likewise, the 120-day appeal provision of the Contract Disputes Act does not affect the suitability of § 315.310 for contract appeals. The Equal Access to Justice Act expressly provides that appeals from decisions on fee applications must be made within 30 days, not 120. And if a government appeal of the substantive decision is pending, under 5 U.S.C. 504(a)(2), the contract appeals board may not reach a final decision on an EAJA application in any event.

James McQuiston has suggested that the rules contain provisions directly related to the Administrative Conference's EAJA data collection effort. He would require applicants for awards to submit a partially-completed Administrative Conference report form, including data from their applications as to eligibility, fees claimed, and the proceeding involved, with their applications. He also suggests provisions identifying the agency personnel responsible for gathering EAJA data and the procedures they are to follow in collecting and submitting the data to the Conference.

We appreciate this concern for the effectiveness of our data-collection efforts. However, we are not certain whether the rules proposed would significantly aid those efforts. Requiring applicants to submit an ACUS form with their fee applications may be an efficient way of initiating the data collection process for some agencies and unnecessarily burdensome for others. (For example, it might be difficult for agencies holding hearings in many locations around the country to make the forms readily available to applicants.) Although we are not including this proposal in our model rules, we suggest that individual agencies consider it, reaching their own conclusions as to whether it would be helpful.

The other suggested rules on data collection relate to internal agency procedures rather than to matters that directly affect the public. The agencies are already bound by statute to provide the Conference with necessary data, and an agency rule will not add anything to this statutory requirement. Thus we don't see any clear purpose in detailing the procedures in regulations. However, if individual agencies believe that the adoption of a rule describing their data collection procedures will help to strengthen those procedures, they may wish to consider this suggestion further.

List of Subjects in 1 CFR Part 315

Administrative practice and procedure, Equal access to justice.

Chapter III of Title 1, CFR is amended to add Part 315 to read as follows:

PART 315—MODEL RULES FOR IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

Subpart A—General Provisions

Subpart B—Information Required From Applicants

Subpart C—Procedures for Considering Applications

Authority: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 [5 U.S.C. 504(c)(1)]; Pub. L. 99–80, 99 Stat. 183.

Subpart A—General Provisions

§ 315.101 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before this agency. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that this agency will use to make them.

§ 315.102 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before this agency on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in subpart B of these rules, has been filed with the agency within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

§ 315.103 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by this agency. These are (i) adjudications under 5 U.S.C. 554 in which the position of this or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding, and (ii) appeals of decisions of contracting officers made pursuant to

section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before agency boards of contract appeals as provided in section 8 of that Act (41 U.S.C. 607). Any proceeding in which this agency may prescribe a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." For this agency, the types of proceedings generally covered include: [to be supplied by the agency]

Alt. 315.103(a): [for use by contract appeals boards] The Act applies to appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before this board as provided in section 8 of that Act (41 U.S.C. 607).

(b) This agency's failure to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 315.104 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

Alt. 315.104(c): [for use by contract appeals boards] For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for renumeration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 315.105 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The position of the agency includes, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based. The burden of proof that an award should not be made to an ineligible prevailing applicant because the agency's position was substantially justified is on the agency counsel.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§315.105 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which this agency pays expert witnesses, which is [to be supplied by the agency]. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

§ 315.107 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), this agency may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in some or all of the types of proceedings covered by this part. This agency will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with this agency a petition for rulemaking to increase the maximum rate for attorney fees, in accordance with [cross-reference to, or description of, standard agency procedure for rulemaking petitions.] The petition should identify the rate the petitioner believes this agency should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. This agency will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

§ 315.108 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before this agency and takes a position that is not substantially justified, the award or an approriate portion of the award shall be made against that agency.

§ 315.109 Delegations of authority.

This agency delegates to [identify appropriate agency unit or officer] authority to take final action on matters pertaining to the Equal Access to Justice Act, 5 U.S.C. 504, in actions arising under [list statutes or types of proceedings.] This agency may by order delegate authority to take final action on matters pertaining to the Equal Access to Justice Act in particular cases to other subordinate officials or bodies.

Alt. 315.109: [Contract appeals boards may omit this section.]

Subpart B—Information Required From Applicants

§ 315.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of an agency or agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes this agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 315.202 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the new worth of the applicant and any affiliates (as defined in § 315.104(f) of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with this agency's established procedures under the Freedom of Information Act [insert cross reference to agency FOIA rules].

§ 315.203 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed, pursuant to § 315.306 of these rules.

§ 315.204 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30

days after this agency's final disposition of the proceeding.

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, become a final and unappealable, both within the agency and to the courts.

(c) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Subpart C—Procedures for Considering Applications

§ 315.301 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 315.202(b) for confidential financial information.

§ 315.302 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 315.306.

§ 315.303 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under §315.306.

§ 315.304 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 315.305 Settlement.

The application and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the agency's standard settlement procedure. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 315.306 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 315.307 Decision.

The adjudicative officer shall issue an initial decision on the application within [to be supplied by the agency] days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

Alt. 315.307 [for use by contract appeals boards] The Board shall issue its decision on the application within [to be supplied by the agency] days after completion of proceedings on the application. Whenever possible, the decision shall be made by the same administrative judge or panel that decided the contract appeal for which fees are sought. The decision shall include written findings . . . . [Continue as in 315.307, from the second sentence to the end.]

§ 315.308 Agency review.

Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the agency may decide to review the decision on its own initiative, in accordance with [cross-reference to agency's regular review procedures.] If neither the applicant nor agency counsel seeks review and the agency does not take review on its own initiative, the initial decision on the application shall become a final decision of the agency [30] days after it is issued. Whether to review a decision is a matter within the discretion of the agency. If review is taken, the agency will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

Alt. 315.308: (for use by contract appeals board) Reconsideration. Either party may seek reconsideration of the decision on the fee application in accordance with [cross-

reference to rule on reconsideration of contract appeals board decisions].

§ 315.309 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 315.310 Payment of award.

An applicant seeking payment of an award shall submit to the [comptroller or other disbursing official] of the paying agency a copy of the agency's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts. [Include here address for submissions at specific agency.] The agency will pay the amount awarded to the applicant within 60 days.

Dated: April 28, 1986.

Marshall J. Breger,

Chairman.

[FR Doc. 86-9789 Filed 5-5-86; 8:45 am]

BILLING CODE 6110-01-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

Pay Administration (General)

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations on offsetting debts due the United States from the current pay of a Federal employee. These revisions are necessary (1) to make the definition of "agency" reflect the full range of governmental entities authorized to use the provisions of 5 U.S.C. 5514; and (2) to establish a system through which Federal agencies can obtain an official to conduct salary offset hearings when they cannot make adequate arrangements by some other means.

EFFECTIVE DATE: June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia A. Rochester, (202) 632-1265.

SUPPLEMENTARY INFORMATION: These final regulations incorporate two regulations previously published separately. On October 31, 1984, OPM published interim regulations (49 FR 43619) to establish an emergency system so creditor agencies could arrange for a Federal employee to serve as a hearing official for salary offsets. On April 30, 1985, OPM published proposed regulations (50 FR 18267) revising the definition of "agency" and deleting some extraneous material inadvertently included in 5 CFR 550.1106(b)(3). Both regulations provided a 60-day comment period. A summary of the comments received and an explanation of any resulting changes to the regulatory text follows.

1. The Definition of Agency

We received three comments on our proposed regulations—two from Federal agencies and one from a labor organization.

The two agencies recommended changes to the proposed amendment of the definition. Both recommendations were incorporated. The final regulations expand the description of the judicial branch and add a new category for Government entities not directly classifiable in any of the three branches, such as the Smithsonian Institution.

The labor organization questioned whether the scope of 5 U.S.C. 5514 could be extended to include the legislative and judicial branches. The General Accounting Office (GAO) believes that it can and we agree. (See GAO decision B-217402 dated June 10, 1985). The original legislation (Pub. L. 83-497, 68 Stat. 482 (1954)) authorized administrative offset of current pay for erroneous payments made to or on behalf of civilian or military personnel of the Government. No qualifications were mentioned that would have restricted the authority to any particular branch of the Government. It does not appear that either the recodification of title 5 in 1966 (Pub. L. 89-554, 80 Stat. 477) or the subsequent amendments by the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749) made any substantive change in the scope of the original statute.

2. A System for Obtaining Hearing Officers

We received eight comments on the interim regulations—six from Federal agencies and two from labor organizations. The labor organizations did not object to the regulations.

a. *Burden on agency personnel.* Five of the six agencies commented on the potential burden on the debtor's employing agency if a significant number of employees were subjected to a salary offset at the same time. They believe the 60-day turnaround requirement may handicap agencies in performing their own missions.

We appreciate the concern expressed in these comments. We would like to stress, however, that this procedure for obtaining hearing officials applies in the event that "the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement . . . ." [Emphasis added.] Agencies are free to establish a system that will meet their particular needs. These regulations establish an emergency procedure that was never intended to be the sole or primary system for obtaining hearing officials.

b. *Cost and reimbursement.* Four agencies were concerned about reimbursement for costs associated with the hearings. Some agencies believe that a requirement to provide hearing officials must be accompanied by a clear requirement for reimbursement.

Although the final salary offset regulations state that the arrangements for a salary offset hearing official are to be made by the creditor agency, the factors to be considered in determining which party bears the financial responsibility for salary offset hearings may vary from case to case. Therefore, agencies are free to arrive at any mutually satisfactory arrangements consistent with any applicable limitations on the expenditure of their appropriated funds.

c. *Competency of hearing officials and consistency of decisions.* Two agencies noted that the method of selecting hearing officials can affect consistency in the hearings and decisions. One agency believed that specific qualifications criteria provided by OPM would produce consistency in selecting individuals for hearing officials. This would in turn produce some consistency in the quality of hearings given Government-wide. Another agency believed that a plan requiring the creditor agency to obtain a hearing official from the debtor's employing agency would not permit the creditor agency to select specific hearing officers by name. The agency believed that if it could select an individual by name, repeated use of the same individual would permit him or her to become familar with the statutory basis of the debts under review, thus producing consistency in the decisions.

Both creditor and employing agencies should be aware of the importance of reliable and consistent debt collection procedures. However, the salary offset hearing is primarily a fact-finding proceeding. The primary plan established by an agency for requiring hearing officials, should be designed to ensure that each employee obtains a fair hearing and that the Government's

interest in collecting the debt is well represented.

d. *Requests for assignments of hearing officials.* Two agencies questioned the method we proposed for contracting Federal agencies to obtain the appointment of a hearing official. These agencies believed that using the officials designated to receive garnishment orders in the appendix to 5 CFR Part 581, might delay getting the request to the appropriate agency contact for appointing hearing officials.

We realize that agency contacts for garnishments may not be the contacts designated to assign available hearing officers. However, because this is an emergency procedure and will not be used routinely, we suggest that agencies keep their garnishment contacts advised of the appropriate hearing officer contact so that a timely referral may be made.

e. *Transmitting confidential material.* One agency commented on the fact that some hearings will require the transfer of confidential material from one agency to another—a matter we do not address in these regulations. We do not believe it is necessary to include this discussion in the regulations. Any necessary guidance will be included in our FPM letter.

E.O. 12291, Federal Regulation

I have detemined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations are on administrative practices that affect only the Federal Government.

List of Subjects in 5 CFR Part 550

Administrative practice and procedures, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 550 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

* * * * *

Subpart K—Collection by Offset From Indebted Government Employees

1. The authority citation for Subpart K of Part 550 continues to read as follows:

Authority: 5 U.S.C. 5514; sec. 8(1), E.O. 11609, 3 CFR, 1971–1975 Comp., 586; redesignated in sec. 2–1, E.O. 12107, 3 CFR, 1978 Comp., 264.

2. In § 550.1103, the definition of "agency" is revised to read as follows:

§ 550.1103 Definitions.

* * * * *

"Agency" means (a) an Executive agency as defined in Section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission; (b) a military department as defined in Section 102 of title 5, United States Code; (c) an agency or court in the judicial branch, including a court as defined in Section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation; (d) an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and (e) other independent establishments that are entities of the Federal Government.

* * * * *

§ 550.1106 [Amended]

3. In § 550.1106, paragraph (b)(3) is amended by removing the last three sentences in the paragraph, commencing with the sentence—"Ordinarily, hearings may consist of informal conferences . . . ."

4. A new § 550.1107 is revised to read as follows:

§ 550.1107 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the paying agency designated in Appendix A of Part 581 of this chapter to arrange for a hearing official, and the paying agency must then cooperate as provided by 4 CFR 102.1 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in Appendix A of Part 581 of this chapter to arrange for a hearing official. Agencies must then cooperate as required by 4 CFR 102.1 and provide a hearing official.

[FR Doc. 86–10139 Filed 5–5–86; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

[Plum Regs. 17 and 19; Amdt. 3 and 8]

Pears, Plums and Peaches Grown in California; Amendment of Container and Pack Requirements; Amendment of Grade and Size Requirements for Plums

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends container and pack requirements and grade and size requirements for shipments of fresh plums grown in California. These amendments are designed to provide uniformity of sizes of the plums in containers and assure adequate quality of plum pack during the 1986 season.

EFFECTIVE DATE: April 30, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250 (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 608 handlers will be subject to regulation under the Marketing Order for California pears, peaches, and plums (7 CFR Part 917) during the course of the current season and the great majority of this group may be classified as small entities. While the final rule may impose some costs on affected handlers, and that the number of such firms may be

substantial, the added burden on small entities, if present at all, is not significant.

This final rule is issued under the marketing agreement, as amended, and Marketing Order 917, as amended (7 CFR Part 917), regulating the handling of pears, plums, and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Shipment of these California plums are regulated by container and pack under Plum Regulation 17 (7 CFR Part 917.454) and by grade and size under Plum Regulation 19 (7 CFR Part 917.460). Because these regulations do not change substantially from season to season, they are issued on a continuing basis subject to amendment, modification or suspension as may be recommended by the applicable committee and approved by the Secretary.

Notice of the proposed amendment of the respective requirements was published in the **Federal Register** (51 FR 9827) on March 21, 1986. It invited interested persons to file comments on the proposal through April 7, 1986. No comments were received.

This final rule is based upon the recommendation and information submitted by the Plum Commodity Committee, the information contained in the notice, and other available information.

With respect to container and pack requirements, the final rule allows a size variance between the smallest and largest plums of ⅜ inch for plums 2¼ inch in diameter and larger when packed in volume-filled containers. Previously, the maximum variation permitted was ¼ inch (or ⅜ inch) regardless of the diameter of the plums and the type of container. The size variation requirement should allow handlers additional flexibility in packing larger size plums in volume-filled containers, whereas for any size plums packed in tray packs the ⅜ inch size variance continues to apply. In addition, because the ⅜ inch size variance is greater than the ⅜ inch size variance permitted in the standard pack requirements in the United States Standards for Grades of Fresh Plums and Prunes (7 CFR 51.1520 to 51.1538), the requirement that shipments of plums meet all standard pack requirements is deleted. Instead, the final rule lists the specified pack requirements for shipments of plums.

With respect to size requirements, the final rule requires that all plums regulated by size be subject to a two-pound subsample of the smallest plums taken from each eight-pound sample used in checking compliance with size requirements. The volume-filled container is the most frequently used container in the California plum industry (it comprised more than 89 percent of total 1985 shipments). However, the nature of such packs allows for significant diameter variation. The additional two-pound subsample should limit such variation and help assure that the individual plums in each pack are uniformly sized.

Another size requirement change establishes minimum size requirements for three varieties of plums and removes minimum size requirements for six plum varieties. This change brings the variety-specific size regulation established for plums into conformity with a long-standing industry practice of applying such regulation to varieties produced in commercially significant quantities. Shipments of the varieties that are regulated exceeded 10,000 packages per variety during the 1985 season. Shipments of the varieties that have been removed from the variety-specific size regulation fell below 5,000 packages per variety during the season.

A final size requirement change requires all varieties not subject to the variety-specific regulations to be subject to a minimum size requirement. This size requirement will subject these varities of plums to the eight-pound sample and two-pound subsample tests. The eight-pound sample cannot contain more than 139 plums, and the two-pound subsample of the smallest plums in each eight-pound sample cannot contain more than 38 plums. This change should help to improve the size and maturity of the varieties not specifically regulated by size and thereby promote the availability of suitable quality fruit in the interest of producers and consumers.

After considering the recommendations submitted by the Plum Commodity Committee, the information contained in the notice, and other available information, the Department has determined that the action hereinafter set forth tends to effectuate the declared policy of the act and should be issued.

In addition, it is found that it is impracticable, unnecessary, and contrary to the public interest to postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The harvest and shipment of these plums is expected to begin soon. Hence, this action must be effective promptly to minimize any inequity among producers or handlers due to different requirements for different parts of the 1986 shipping season. Moreover, the provisions in the final rule are the same as those contained in the proposal which was published in the **Federal Register** on March 21, 1986. Growers and handlers have been preparing to conduct their operations in light of the proposed changes and do not require any additional time for preparation. No useful purpose would be served by delaying the effective date of these actions.

This final rule amends Subpart—Container and Pack Regulation (7 CFR §§ 917.454; 50 FR 39073) by revising § 917.454(a)(1), (a)(2), and (d) and Subpart—Grade and Size Regulation (7 CFR §§ 917.460; 50 FR 27813) by revising § 917.460(a), (b), and (c).

List of Subjects in 7 CFR Part 917

Marketing agreements and orders, Pears, Plums, and Peaches from California.

1. The authority citation for 7 CFR Part 917 continues to read as follows:

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

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

2. Section 917.454(a)(1), (a)(2), and (d) is revised to read as follows:

Subpart—Container and Pack Regulation

§ 917.454 Plum Regulation 17.

(a) * * *

(1) Such plums, when shipped in closed packages or containers, except master containers of consumer packages and individual consumer packages therein, shall meet the following pack requirements as set forth below.

(i) All packages shall be tightly packed or well filled, according to the approved and recognized methods.

(ii) The plums in the top layer of any package shall be reasonably representative in quality and size of those in the remainder of the package.

(iii) Four-basket crates shall not be more than three layers deep. The arrangement of the bottom layer shall be one row less one way, and may be one row less each way than the arrangement of the top layer; the arrangement of the middle layer may be the same as the top layer, or may be one row less one way than the arrangement of the top layer. In the 3½—4x5 and 3½—4x4 packs the face of each half of the crate shall be packed as a unit, with no shim between the two baskets.

(2) The diameter of the smallest and largest plums in any individual pack or container shall not vary more than one-fourth (¼) inch, except that plums which

are placed in volume-fill or tight-fill type containers and have a diameter of two and one-fourth (2¼) inches or larger shall not vary more than three-eights (⅜) inch. A total of not more than five (5) percent, by count, of the plums in any package or container may fail to meet this requirement.

* * * * *

(d) When used herein "diameter" shall have the same meaning as set forth in the U.S. Standards for Grades of Fresh Plums and Prunes (7 CFR 51.1520 to 51.1538) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. "No. 12B standard fruit box" measures 2⅜ to 7⅛ x 11½ x 16⅛ inches, "No. 22D standard lug box" measures $2^{7}/_{8}$ to $7^{1}/_{8}$ x $13^{1}/_{2}$ x $16^{1}/_{8}$ inches, "No. 22G standard lug box" measures 7⅜ to 7½ x 13¼ x 15⅞ inches. All dimensions are given in depth (inside dimensions) by width by length (outside dimensions).

3. Section 917.460 is revised to read as follows:

§ 917.460 Plum Regulation 19.

(a) No handler shall ship any lot of packages or containers of any plums unless such plums grade at least U.S. No. 1, except that maturity shall be determined by the application of color standards by variety or such other tests as determined to be proper by the Federal or Federal-State Inspection Service. Internal discoloration not considered serious damage and healed growth cracks emanating from the stem end which do not cause serious damage shall be permitted. In addition to the above, any lot of Tragedy or Kelsey plums shall be permitted an additional 10 percent tolerance for defects not considered serious damage.

(b) No handler shall ship any package or other container of any variety of plums listed in Column A of the following Table I unless such plums are of a size that an eight-pound sample, representative of the sizes of the plums in the package or container, contains not more than the number of plums listed for the variety in Column B of said table, and that a two pound subsample of the smallest plums in each eight-pound sample contains not more than the number of plums listed for the variety in Column C of said table.

TABLE I

Column A, variety	Plums per sample	Column C, plums per subsample
Amazon	64	17
Ambra	67	18
Andys Pride	69	18
Angeleno	67	18
Angee	67	18
Autumn Rosa	72	19
Bee Gee	65	17
Blackamber	56	15
Black Beault	69	19
Black Diamond	59	16
Black Jewel	54	14
Black Knight	58	16
Carolyn Harris	61	17
Casselman	63	17
Catalina	59	16
Durado	74	20
Early Hawaiian Ann	60	16
Ebony	66	18
El Dorado	68	18
Empress	57	15
Freedom	56	15
Friar	56	15
Frontier	61	17
Gar-Rosa	71	19
Grand Rosa	54	14
July Red	64	17
July Santa Rosa	69	18
Kelsey	47	13
King David	50	14
King Richard	54	14
King's Black	58	16
Laroda	58	16
Late Santa Rosa (including improved Late Santa Rosa and Swall Rosa	64	17
Linda Rosa	63	17
Mariposa	61	17
Midsummer	63	17
Nubiana	56	15
President	57	15
Prima Black	69	13
Queen Ann	50	14
Queen Rosa	53	14
Red Beault	74	20
Red Glow	60	16
Red Rosa	64	17
Redroy	58	16
Rich Red	74	20
Rosa Ann	69	18
Rosemary	50	14
Rose Ann	60	16
Royal Red	74	20
Roysum	74	20
Santa Rosa	69	19
Simka, Arrosa, New Yorker	50	14
Spring Beault	74	20
Standard	83	21
Wickson	51	14

(c) No handler shall ship any package or container of any variety of plums not specifically named in paragraph (b) of this section, unless such plums are of a size that an eight-pound sample representative of the sizes of the plums in the package or container contains not more than 139 plums, and that a two-pound subsample of the smallest plums in each eight-pound sample contains not more than 38 plums.

(d) As used herein, "U.S. No. 1" and "serious damage" mean the same as defined in the United States Standards for Grades of Fresh Plums and Prunes (7 CFR 51.1520 through 51.1538).

Dated: April 30, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86-10071 Filed 5-5-86; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks Changes in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of reducing discount rates. The discount rate action was taken in the context of similar action by other important industrial countries and sizable declines in most market interest rates in recent weeks. More broadly, growth in the various monetary aggregates has been more limited this year, prospects for sustaining impoved price performance and continuing restraint on costs have been further enhanced by the recent sharp declines in oil prices, and the economic expansion appears to be proceeding within the nation's growth potential.

EFFECTIVE DATES: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452-3257), or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202/452-3544), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A to incorporate changes in discount rates on Reserve Bank extensions of credit. Further, under the authority of 5 U.S.C. 553(b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations require that these amendments be adopted immediately.

List of Subjects in 12 CFR Part 201

Banks, banking; Credit; Federal Reserve System.

For the reasons outlined above, the Board of Governors amends Part 201 as set forth below:

1. The authority citation for 12 CFR Part 201 is revised to read as follows:

Authority: Secs. 10(a), 10(b), 13, 13a, 14(d) and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 et seq., 347c, 348 et seq., 357, 374, 374a, and 461); and sec. 7(b) of the International Bank Act of 1978 (12 U.S.C. 347d), unless otherwise noted.

2. Section 201.51 is revised to read as follows:

§ 201.51 Short-term adjustment credit for depository institutions.

The rates for short-term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	6½	Apr. 21, 1986.
New York	6½	Do.
Philadelphia	6½	Apr. 23, 1986.
Cleveland	6½	Apr. 21, 1986.
Richmond	6½	Do.
Atlanta	6½	Apr. 22, 1986.
Chicago	6½	Apr. 21, 1986.
St. Louis	6½	Apr. 22, 1986.
Minneapolis	6½	Apr. 21, 1986.
Kansas City	6½	Do.
Dallas	6½	Do.
San Francisco	6½	Do.

3. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit for depository institutions.

(a) *Seasonal credit.* The rates for regular seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	6½	Apr. 21, 1986.
New York	6½	Do.
Philadelphia	6½	Apr. 23, 1986.
Cleveland	6½	Apr. 21, 1986.
Richmond	6½	Do.
Atlanta	6½	Apr. 22, 1986.
Chicago	6½	Apr. 21, 1986.
St. Louis	6½	Apr. 22, 1986.
Minneapolis	6½	Apr. 21, 1986.
Kansas City	6½	Do.
Dallas	6½	Do.
San Francisco	6½	Do.

(b) *Temporary seasonal credit program.* At the option of the borrower, interest on credit advanced under the temporary simplified seasonal credit program as revised on February 18, 1986, can be either at the basic discount rate (see § 201.51) or at a rate that is one-half percentage point above the basic rate and that will remain fixed during the time the credit is outstanding. The fixed rate for new loans may be changed as the basic discount rate and extended credit rates are changed. In no case should such borrowing, including renewals, be outstanding beyond February 1987.

(c) *Other extended credit.* The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	6½	Apr. 21, 1986.
New York	6½	Do.
Philadelphia	6½	Apr. 23, 1986.
Cleveland	6½	Apr. 21, 1986.
Richmond	6½	Do.
Atlanta	6½	Apr. 22, 1986.
Chicago	6½	Apr. 21, 1986.
St. Louis	6½	Apr. 22, 1986.
Minneapolis	6½	Apr. 21, 1986.
Kansas City	6½	Do.
Dallas	6½	Do.
San Francisco	6½	Do.

These rates apply for the first 60 days of borrowing. A one percentage point surcharge applies for borrowing during the next 90 days, and a two percentage point surcharge applies for borrowing thereafter. Where credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period and in relatively large amounts, the time period in which each rate under the structure is applied may be shortened, and the rate may be established on a more flexible basis, taking into account rates on market sources of funds.

By order of the Board of Governors of the Federal Reserve System, April 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-9985 Filed 5-5-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-ASO-12]

Alteration of Certain Control Zones and Transition Areas in Florida and Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment updates the names and geographical coordinates of various airports which have been changed but which have not yet been included in the individual airport control zone and/or transition area descriptions. No significant change in airspace designation will result from this action.

DATES: Effective date: 0901 UTC, July 3, 1986.

Comments must be received on or before June 15, 1986.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 86-ASO-12, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves editorial corrections to certain control zones and transition areas, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to correctly list the names and geographical coordinates of airports specified in certain airspace designations. Various political bodies have officially changed the names of certain airports and past airport alterations have resulted in changes in geographical coordinates. It, therefore, is necessary to alter the control zone and transition area descriptions to reflect these changes. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in FAA Handbook 7400.6B dated January 2, 1986.

Under the circumstances presented, the FAA concludes that there is a need

to alter the various control zone and transition area descriptions to reflect the changes in airport names and geographical coordinates. The changes are so minor and nonsubstantive I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone, Transition area.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

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

2. Section 71.171 is amended as follows:

Titusville, FL—[Amended]

By removing the words "Titusville-Cocoa Airport (lat. 28°30'45" N., long. 80°48'11" W.);" and replacing them with the words "Space Center Executive Airport (lat. 28°30'49" N., long. 80°47'59" W.);".

Valdosta Municipal Airport, GA—[Amended]

By removing the word "Municipal" from the title and replacing it with the word "Regional" and by removing from the description the following words "Valdosta Municipal Airport (lat. 30°46'58" N., long. 83°16'44" W.);" and replacing them with the words "Valdosta Regional Airport (lat. 30°46'56" N., long. 83°16'37" W.).".

3. Section 71.181 is amended as follows:

Marathon, FL—[Amended]

By removing the words "Flight Strip" and replacing them with the word "Airport".

Titusville, FL—[Amended]

By removing the words "Titusville-Cocoa Airport (lat. 28°30'45" N., long. 80°48'11" W.);" and replacing them with the words "Space Center Executive Airport (lat. 28°30'49" N., long. 80°47'59" W.);".

Valdosta, GA—[Amended]

By removing the words "Valdosta Municipal Airport (lat. 30°46'58" N., long. 83°16'44" W.);" and replacing them with the words "Valdosta Regional Airport (lat. 30°46'56" N., long. 80°16'37" W.);".

Issued in East Point, Georgia, on April 15, 1986.

James L. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-10041 Filed 5-5-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 376

[Docket No. 60459-6059]

Information Collection Control Numbers

AGENCY: Export Administration, Commerce.

ACTION: Final rule; notice of OMB approval.

SUMMARY: The Export Administration Regulations (EAR) contain provisions relating to the licensing for export or reexport of numerical control units, numerically controlled machine tools, and dimensional inspection machines. The final rule containing these provisions was published in the Federal Register on September 11, 1985 (50 FR 37112) and became effective on October 23, 1985. This document adds the Office of Management and Budget (OMB) control number 0625-0152 to the information collection requirements of the rule.

DATE: The regulation became effective on October 23, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Usrey, Regulations Branch, Export Administration, Telephone (202) 377-4479.

SUPPLEMENTARY INFORMATION: OMB control number 0625-0152.

As required by the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., Export Administration submitted this regulation on reporting of certain information for export or reexport of numerical control units, numerically controlled machine tools, and dimensional inspection machines, to proscribed destinations. As stated in the final rule, the approval of this reporting requirement was pending with OMB. On October 23, 1985, OMB approved this collection of information and assigned control number 0625-0152.

List of Subjects in 15 CFR Part 376

Exports.

Accordingly, Part 376 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

1. The authority for 15 CFR Part 376 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; and E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. OMB control number 0625-0152 is added to the end of § 376.11 to read as follows:

§ 376.11 Numerical control units, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed assemblies, and specially designed software.

* * * * *

(Approved by the Office of Management and Budget under control number 0625-0152)

Dated: April 30, 1986.

Walter J. Olson,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-10049 Filed 5-5-86; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket Nos. 84N-0319 and 76N-0366]

FD&C Yellow No. 5 and its Lakes; Postponement of Closing Date, Provisional Listing, and Continued Stay of Effectiveness

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Yellow No. 5 for use in coloring cosmetics generally and externally applied drugs and of its lakes for use in coloring food and ingested drugs. FDA is establishing a new closing date for FD&C Yellow No. 5 to give the agency time to complete its evaluation of the objections that it received in response to the final rule on the use of FD&C Yellow No. 5 that FDA published in the Federal Register of September 4, 1985 (50 FR

35774). The regulations that permanently list FD&C Yellow No. 5 and that remove it from the provisional list are stayed until July 7, 1986.

DATES: Effective May 6, 1986, the new closing date for FD&C Yellow No. 5 will be July 7, 1986. The effective date of the final rule published September 4, 1985, is stayed pending final FDA action on the objections that it received.

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

SUPPLEMENTARY INFORMATION: FDA established the current closing date of May 6, 1986, for the provisional listing of FD&C Yellow No. 5 in a regulation published in the Federal Register of March 7, 1986 (51 FR 7933). The agency established the May 6, 1986, closing date for FD&C Yellow No. 5 to provide time for its evaluation of three objections to the final rule on the use of this color additive, which FDA published on September 4, 1985.

Previously, after review and evaluation of the data relevant to the petition to list FD&C Yellow No. 5 for use in externally applied drugs and in cosmetics generally, the agency had concluded that FD&C Yellow No. 5 is safe for these uses. Therefore, FDA issued a final rule in the Federal Register of September 4, 1985 (50 FR 35774), that would permanently list FD&C Yellow No. 5 for those uses and would remove the stay on the use of FD&C Yellow No. 5 in external cosmetics. FDA stated that the final rule would become effective on October 7, 1985, unless stayed by the filing of proper objections.

FDA received three letters stating objections to this final rule. Because of the objections, under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)(2)), the effect of this final rule is stayed until the agency can rule upon the objections. FDA expects that it will need only a small amount of additional time to complete its evaluation of the objections. Therefore, FDA concludes that only a brief postponement is necessary at this time. The regulation set forth below will postpone the May 6, 1986, closing date for the provisional listing of FD&C Yellow No. 5 until July 7, 1986.

Because the current closing date expires on May 6, 1986, FDA has concluded that the use of notice and public procedure on this regulation is impracticable. Thus, good cause exists for issuing the postponement as a final rule. Moreover, this action is consistent with the protection of the public health because the agency has previously concluded that FD&C Yellow No. 5 is safe for its intended use under the Color Additive Amendments of 1960. This regulation will permit the uninterrupted use of the color additive until July 7, 1986. To prevent any interruption in the provisional listing of FD&C Yellow No. 5 and in accordance with 5 U.S.C. 553(d)(1) and (3), this regulation is being made effective on May 6, 1986. Any person who wishes to comment on the regulation may do so in accordance with 21 CFR 10.40(e)(1).

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

§ 74.1705 [Stayed]

2. The modifications of § 74.1705 *FD&C Yellow No. 5* included in the September 4, 1985, final rule continue to be stayed.

§ 74.2705 [Stayed]

3. Section 74.2705 *FD&C Yellow No. 5* continues to be stayed.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

4. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

5. Section 81.1 *Provisional list of color additives* is amended in paragraph (a) by revising the closing date for "FD&C Yellow No. 5" to read "July 7, 1986."

§ 81.27 [Amended]

6. Section 81.27 *Conditions of provisional listing* is amended in paragraph (d) by revising the closing date for "FD&C Yellow No. 5" to read "July 7, 1986."

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

7. The authority citation for 21 CFR Part 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

§ 82.705 [Stayed]

8. The modifications of § 82.705 *FD&C Yellow No. 5* included in the September 4, 1985 final rule continue to be stayed.

Dated: April 25, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–10193 Filed 5–5–86; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Oxytetracycline With Monensin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc., providing for safe and effective use of certain Type C broiler feeds made by combining separately approved oxytetracycline and monensin Type A articles. The Type C broiler feed is used as an aid in the reduction of mortality due to air-sacculitis (air-sac infection) caused by *E. coli* sensitive to oxytetracycline, and as an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

EFFECTIVE DATE: May 6, 1986.

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

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d Street, New York, NY 10017, has filed a supplement of NADA 99–006 providing for combining separately approved oxytetracycline and monensin Type A articles to make Type C broiler feeds containing 500

grams of oxytetracycline and 90 to 110 grams of monensin per ton as an aid in the reduction of mortality due to air-sacculitis (air-sac infection) caused by *Escherichia coli* sensitive to oxytetracycline, and as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.* Based on the data and information submitted, the supplement is approved and the regulations are amended accordingly. The basis of approval is discussed in the freedom of information summary.

In addition, the regulations in 21 CFR 558.450 for use of oxytetracycline (200 grams per ton) with monensin (90 to 110 grams per ton) and for oxytetracycline (500 grams per ton) had been approved for the mono-alkyl (C_8–C_{18}) trimethylammonium salt. The regulations had inadvertently failed to identify the approved salt. The regulations are further amended to specify the approved oxytetracycline salt.

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

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

List of Subjects in 21 CFR Part 558

Animal drugs; Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.355 is amended by adding new paragraphs (b)(12) and (f)(1)(xxii) to read as follows:

§ 558.355 Monensin.

* * * * *

(b) * * *

(12) To 000069: paragraph (f)(1)(xxii) of this section.

* * * * *

(f) * * *

(1) * * *

(xxii) *Amount per ton.* Monensin, 90 to 110 grams plus oxytetracycline, 500 grams.

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. Mivati,* and *E. maxima;* as an aid in the reduction of mortality due to air-sacculities (air-sac infection) caused by *Escherichia coli* sensitive to oxytetracycline.

(*b*) *Limitations.* Feed for 5 days as sole ration. Do not feed to laying chickens. Withdraw 24 hours before slaughter. As monensin sodium provided by No. 000986 in § 510.600(c) of this chapter. As mono-alkyl (C_8-C_{18}) trimethylammonium oxytetracycline provided by No. 000069 in § 510.600(c) of this chapter.

* * * * *

3. Section 558.450 is amended in paragraph (d)(1), Table 1, in item (iv) by adding an additional limitation for oxytetracycline with monensin and in item (v) by adding an additional limitation and a new entry; and in paragraph (d)(2) by adding (ii) [Reserved] to read as follows:

§ 558.450 Oxytetracycline.

* * * * *

(d) * * *

(1) * * *

TABLE 1.—IN COMPLETE CHICKEN AND TURKEY FEED

Oxytetracycline in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(iv) * * *	Monensin 90 to 110	* * *	As monoalkyl (C_8-C_{18}) trimethyl-ammonium oxytetra-cycline.	
(v) * * *	* * *	* * *	* * *	
	Monensin 90 to 110	Broiler chickens; as an aid in the reduction of mortality due to air-sacculities (air-sac infection) caused by *Escherichia coli* sensitive to oxytetracy-cline; as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*	As mono-alkyl (C_8 C_{18}) trimethyl-ammonium oxytetra- cycline Feed for 5 days as sole ration; do not feed to laying chickens; withdraw 24 hours before slaughter. As monensin sodium. As mono-alkyl (C_8-C_{18}) trimethyl-ammonium oxytetra-cycline	

* * * * *

(2) * * *

(ii) [Reserved]

Dated: April 29, 1986.

Marvin A. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 86–10058 Filed 5–5–86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[Order No. 1134–86]

Fees for the Federal Bureau of Investigation Identification Record

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule permits the FBI Identification Division to increase the fee for the production of identification records to the subjects of such records set forth in § 16.33 of Title 28 of the Code of Federal Regulations (CFR). It also revises certain sections to reflect the FBI Identification Division's new nine-digit ZIP Code.

EFFECTIVE DATE: May 1, 1986.

FOR FURTHER INFORMATION CONTACT: Melvin D. Mercer, Jr., Chief of the Recording and Posting Sections, Identification Division, FBI, Washington, D.C. 20537–9700, telephone number (202) 324–5454.

SUPPLEMENTARY INFORMATION: A proposed rule to increase the fee for the production of identification records to the subjects of such records was published in the **Federal Register** on February 6, 1986 (51 FR 4614, 4615). Interested persons were allowed 30 days to submit comments on the proposal. No comments were received.

Departmental Order 556–73 (38 FR 32806, November 28, 1973) directed that the FBI publish rules for the dissemination of arrest and conviction records upon request. This order

resulted from a determination that section 534 of Title 28 of the United States Code (U.S.C.) does not prohibit the subjects of arrest and conviction records from having access to those records. In accordance with the Attorney General's order, the FBI will release to the subjects of identification records copies of such records upon submission of a written request, a set of rolled-inked fingerprint impressions and the appropriate processing fee. Based on current cost analysis, the cost for production of an FBI identification record has increased from $11.00 to $14.00.

This final rule also revises the five-digit ZIP Code appearing in 28 CFR 16.32 and 16.34 to reflect the FBI Identification Division's new nine-digit ZIP Code, 20537-9700.

List of Subjects in 28 CFR Part 16

Archives and records, Freedom of Information, Privacy, Sunshine Act.

PART 16—[AMENDED]

By virtue of the authority vested in me as Attorney General, including 28 U.S.C. 509, 510, and 5 U.S.C. 301, Part 16, Subpart C of Title 28 of the CFR is amended as follows:

1. The authority citation for Part 16 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510; 28 U.S.C. 534; 31 U.S.C. 9701.

2. All other authority citations are removed from this Part.

3. Section 16.32 is revised to read as follows:

§ 16.32 Procedure to obtain an identification record.

The subject of an identification record may obtain a copy thereof by submitting a written request via the U.S. mails directly to the FBI, Identification Division, Washington, D.C. 20537-9700, or may present his/her written request in person during regular business hours to the FBI Identification Division, Room 11262, J. Edgar Hoover F.B.I. Building, Tenth Street and Pennsylvania Avenue, NW., Washington, D.C. Such request must be accompanied by satisfactory proof of identity, which shall consist of name, date and place of birth and a set of rolled-inked fingerprint impressions placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

4. Section 16.33 is revised to read as follows:

§ 16.33 Fee for production of identification record.

Each written request for production of an identification record must be accompanied by a fee of $14.00 in the form of a certified check or money order, payable to the Treasury of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 9701 and is based upon the clerical time beyond the first quarter hour to be spent in searching for, identifying, and reproducing each identification record requested as specified in § 16.10 of this part. Any request for waiver of the fee shall accompany the original request for the identification record and shall include a claim and proof of indigency.

5. Section 16.34 is revised to read as follows:

§ 16.34 Procedure to obtain change, correction or updating of identification records.

If, after reviewing his/her identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he/she should make application directly to the agency which contributed the questioned information. The subject of a record may also direct his/her challenge as to the accuracy or completeness of any entry on his/her record to the Assistant Director of the FBI Identification Division, Washington, D.C. 20537-9700. The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI Identification Division will make any changes necessary in accordance with the information supplied by that agency.

Dated: April 29, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86-10047 Filed 5-5-86; 8:45 am]

BILLING CODE 4410-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal-Interest Rates

Correction

In FR Doc. 86-9582 beginning on page 16021 in the issue of Wednesday, April 30, 1986, make the following correction:

On page 16022 in § 2676.15(c), in the first column of the table, "April 1986" should read "May 1986".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Approval of Permanent Program Amendments for the State of Ohio, Under the Surface Mining Control Land Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval, with certain exceptions, of certain amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

By a letter dated January 15, 1986, the Ohio Department of Natural Resources (ODNR) submitted amendments to the rules of procedures for the Reclamation Board of Review (RBR, the Board). OSMRE published a notice in the **Federal Register** on February 26, 1986, inviting public comment on the adequacy of the proposed amendments (51 FR 6752).

By a letter dated March 7, 1986, ODNR resubmitted the RBR rules as they were promulgated as final rules. The final RBR rules contained some differences from the rules announced in the February 26 **Federal Register** and from the proposed RBR rules approved by OSMRE on May 23, 1985 and September 18, 1985 (50 FR 21258, 50 FR 37848). As a result, OSMRE reopened and extended the public comment period on April 1, 1986 (51 FR 11055).

After providing an opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSMRE has determined that all but one of the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving these program amendments and requiring the ODNR to amend the one rule. The Federal rules at 30 CFR Part 935 which codify decisions on the Ohio program are being amended to implement this decision.

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

EFFECTIVE DATE: May 6, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was approved effective August 16, 1982, by the notice published in the August 10, 1982 **Federal Register**. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11 and 935.15.

II. Discussion of Amendments

By letter dated January 15, 1986, the Ohio Department of Natural Resources submitted proposed amendments to the Reclamation Board of Review rules at 1513-3-01, 1513-3-02, 1513-3-03, 1513-3-04, 1513-3-16, 1513-3-17, and 1513-3-21. The proposed amendments consist of the following:

(1) Revisions to 1513-3-01 *Definitions*, "burden of pursuasion" and "proffer";

(2) Revision to 1513-3-02 *Internal regulations*, rules for a quorum, deciding tie votes, keeping records of the RBR's actions, issuance of subpoenas, and governing proceedings following amendment of the RBR's rules;

(3) Revisions to 1513-3-03 *Appearance and practice before the board*, concerning ethical standards of persons appearing before the board and representation before the RBR;

(4) Revisions to 1513-3-04 *Appeals to the RBR*, concerning identification of counsel, if counsel is used, contents of an appeal, and grounds for dismissing an appeal;

(5) Revisions to 1513-3-16 *Conduct of evidentiary hearings*, rules concerning evidence, stipulation, written testimony, witnesses, post-hearing briefs, and additional oral arguments;

(6) Revisions to 1513-3-17 *Voluntary dismissal and settlement* setting forth rules for a settlement prior to a final order by the RBR; and

(7) Revisions to 1513-3-21 *Award of costs and expenses*.

On February 26, 1986, OSMRE published an announcement of the receipt of the amendments and inviting public comment on the adequacy of the proposed amendments (51 FR 6752). The notice stated that a public hearing would be held only if requested. Since there were no requests for hearing, a hearing was not held. The comment period closed on March 28, 1986.

During the comment period, the State resubmitted to OSMRE a set of the RBR rules as they were promulgated in final form (by letter dated March 7, 1986). These final rules contained some differences from the RBR rules dated January 15, 1986, and announced in the **Federal Register** on February 26, 1986, and the proposed RBR rules previously approved by OSMRE on May 23, 1985, and September 18, 1985 (50 FR 21256, 50 FR 37846). Accordingly, OSMRE reopened and extended the comment period to allow consideration of the final version of the RBR rules. The reopening was announced in the **Federal Register** on April 1, 1986 (51 FR 11055). The comment period closed on April 16, 1986. No comments were received.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on January 15, 1986, and resubmitted on March 7, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII, with one exception as discussed below.

Ohio has previously submitted its RBR regulations to OSMRE for approval. The regulations were approved by OSMRE before they were promulgated by ODNR in final form in the May 23, and September 18, 1985 **Federal Register** (50 FR 21256, 50 FR 37846). The revisions submitted to OSMRE on January 15, 1986, are incorporated into the final rules submitted on March 7, 1986 with the exception of 1513-3-21 which now contains language which the Director finds less effective than the Federal regulations.

Ohio Administrative Code Regulation—Reclamation Board of Review Rules of Procedure

1513-3-01—Definitions. Ohio has added a definition of "burden of persuasion". It is defined as proof by a preponderance of evidence. The definition of "proffer" was amended to include the offer or tender of "testimony or documents or other tangible objects" into evidence. The Director finds the definitions to be in accordance with the requirements of SMCRA and no less effective than the Federal regulations at 43 CFR Part 4.

1513-3-02—Internal regulations. Ohio has amended this section to set forth the procedures for obtaining concurrence on Board decisions if at least four Board members do not concur. It further sets forth procedures for deciding a tied vote. It also establishes that the papers and files of the Board may not be removed from the secretary's custody without the secretary's consent; the records and files of the Board are available for inspection during regular business hours; Board proceedings shall be recorded by audio electronic devices and other means if requested, and proceedings transcripts will be available for reproduction. Section (I) establishes the procedures used for the issuance of subpoenas and section (K) states how Board proceedings will be handled following amendment of any RBR rules. The RBR regulations are in accordance with SMCRA and no less effective than the Federal regulations at 43 CFR Part 4.

1513-3-03—Appearance and practice before the Board. This amendment requires all persons appearing before the Board to conform to the standards of ethical conduct required in appearances before the State courts. The Board may bar participation in a particular proceeding for good cause. The rule also sets forth who may represent whom in the absence of an attorney. The Director finds the amendment to be in accordance with SMCRA and no less effective than the Federal regulations at 43 CFR Part 4.

1513-3-04—Appeals to the RBR. This regulation requires an appellant to supply the name, address and telephone number of his/her counsel, if used, in an appeal. The regulation also adds to the information that the appellant must supply if a review is sought. Specifically, the appellant must identify the manner in which he/she is aggrieved and the relief sought. Finally, the regulation states that failure to comply with the provisions of 1513.13 of the Revised Code is grounds for dismissing the appeal and confirming the action of the Board or Chief of the Division of Reclamation. The Director finds the amendment to be in accordance with SMCRA and no less effective than Federal regulations at 43 CFR Part 4.

1513–3–16—Conduct of evidentiary hearings. This regulation contains minor editorial changes; it also allows objections to evidence and cross-examinations with a brief statement of the grounds for the objection and allows the record to include argument on the objection. The regulation also establishes that an exception at any stage of the hearing is unnecessary to lay a foundation for review whenever a matter has been called to the attention of the Board. The regulation sets forth the manner and circumstances in which a proffer may be made. The regulation specifies that public documents entered as part of the record must be held by the Board. If the documents are necessary for the Chief, Division of Reclamation to use in preparing the case, the Chief may keep the documents pending recall by the Board. The regulation states that stipulations concerning issues of facts or authenticity of documents before the Board must have concurrences from all of the parties to an appeal. A new section has been added that sets forth the procedures for the use of written testimony and adds procedures for the use of witnesses and the issues on which the Board may request post hearing briefs. The regulation also allows the Board to order additional oral arguments. The Director finds the amendment to be in accordance with SMCRA and no less effective than 43 CFR Part 4.

1513–3–17—Voluntary dismissal and settlement. A new section has been added to allow a settlement prior to a final order if all parties agree. The terms of the settlement must be submitted to the Board for final action. The Director finds the amendment to be in accordance with SMCRA and no less effective than 30 CFR Part 4.

1513–3–21—Award of costs and expenses. This regulation allows the award of costs and expenses to a permittee from any person or the State if the permittee participates in any proceeding under Chapter 1513 of the Revised Code upon a finding that the permittee made a substantial contribution to a full and fair determination of the issues. It also allows the award of costs and expenses to the State upon a finding that it made a substantial contribution to a full and fair determination of the issues. This is less effective than the Federal regulations at 43 CFR 4.1294. The Federal regulations establish a different more stringent test for the awarding of costs and expenses to permittees and the State. The higher standard set forth in 43 CFR 4.1294 allows the awarding of costs or expenses only if the permittee or State can prove that the proceeding was initiated in bad faith for the purpose of harassing or embarrassing the permittee or State. The Director finds that OAC 1513–3–21 is less effective than 43 CFR 4.1294, and he is not approving it.

IV. Public Comments

No public comments were received.

V. Director's Decision

The Director, based on the above findings, is approving the RBR final rules of procedures as submitted to OSMRE on March 7, 1986, with the exception of OAC 1513–3–21. The Director is amending Part 935 of 30 CFR Chapter VII to reflect approval of the State program amendments, except OAC 1513–3–21 which he is not approving. Part 935 will also be amended to require an amendment to OAC 1513–3–21.

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 OSMRE 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, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have 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 935

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

Dated: April 30, 1986.

Brent Wahlquist,

Acting Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 935—OHIO

30 CFR Part 935 is amended as follows:

1. The authority citation for Part 935 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.).

2. 30 CFR Part 935, is being amended to add a new § 935.12 to read as follows:

§ 935.12 State program provisions disapproved.

The following provision of the Ohio permanent regulatory program submission is hereby disapproved:

(a) Section 1513–3–21 of the Ohio Administrative Code is not approved to the extent that it states: "(3) To a permittee from any person or the State of Ohio, if the permittee initiates or participates in any proceeding under Chapter 1513 of the Revised Code upon a finding that the permittee made a substantial contribution to a full and fair determination of the issues and (4) To the Division of Reclamation where it participates in any proceeding under Chapter 1513 of the Revised Code upon a finding that the Division made a substantial contribution to a full and fair determination of the issues."

(b) [Reserved]

3. In part 935, § 935.15 is amended by adding a new paragraph (t) as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(t) The following amendments submitted to OSMRE on January 15, 1986, as modified on March 7, 1986, are approved effective May 6, 1986: Ohio Administrative Code, Sections 1513–3–01, 1513–3–02, 1513–3–03, 1513–3–04, 1513–3–16, and 1513–3–17.

4. 30 CFR Part 935 is being amended to add a new § 935.16 to read as follows:

§ 935.16 Required program amendments.

Pursuant to 30 CFR 732.17, Ohio is required to submit for OSMRE's approval the following proposed amendment by the date specified.

(a) By January 30, 1987, Ohio shall amend its program at OAC 1513–3–21 to be no less effective than 43 CFR Part 4 concerning the award of costs and expenses.

(b) [Reserved]

[FR Doc. 86–10083 Filed 5–5–86; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment, USS Fort McHenry

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS FORT McHENRY (LSD 43) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval dock landing ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 24, 1986.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS FORT McHENRY (LSD 43) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a dock landing ship. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Foward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS FORT McHENRY	LSD 43							X	64

Date: April 24, 1986.

Approved:

John Lehman,

Secretary of the Navy.

FR Doc. 86-10110 Filed 5-5-86; 8:45am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Truxtun

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS TRUXTUN (CGN 35) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 24, 1986.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS TRUXTUN (CGN 35) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed

herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft mast head lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS TRUXTON	CGN 35						X	X	21

Date: April 24, 1986.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 86-10111 Filed 5-5-86; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Elk River

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972, (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS ELK RIVER (IX 501) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a miscellaneous vessel. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 22, 1986.

FOR FURTHER INFORMATION CONTACT:

Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS ELK RIVER (IX 501) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a miscellaneous vessel. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following vessel.

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. sec. Annex I, 2(a)(ii)	Masthead lights not over all other lights and obstruction Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS ELK RIVER	IX 501							x	18.4

Date: April 22, 1986.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 86-10112 Filed 5-5-86; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Leahy

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS LEAHY (CG 16) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 25, 1986.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria VA 22332/2400. Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS LEAHY (CG 16) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 2(a)(i), pertaining to the distance in meters of the forward masthead light above the hull; Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the vessel; and Annex I, section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special function and purpose of the vessel. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by revising the entry for USS LEAHY (CG 16) to read as follows:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ⅓ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS LEAHY	CG 16	×					×	×	30

Dated: April 25, 1986.

John Lehman,

Secretary of the Navy.

[FR Doc. 86-10109 Filed 5-5-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Special Uses and Rental Fees; Mark Twain National Forest

AGENCY: Forest Service, USDA.

ACTION: Interim rule; request for public comment.

SUMMARY: As part of a pilot program to study methods of improved management of National Forest System lands, the Forest Service is waiving, under limited conditions and for a limited duration, the required payment of rental fees for special use authorizations on the Mark Twain National Forest. The objective is to see if this method will save money when compared to the current practice, particularly for those minor uses where it is impractical to set a fee high enough to cover costs.

EFFECTIVE DATE: This rule is effective upon publication in the **Federal Register**. A final rule will be published following public comment. Comments must be received by June 5, 1986.

ADDRESS: Send written comments to R. Max Peterson, Chief (2720), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

The public may inspect comments received on this interim rule in the office of the Director, Lands Staff, Room 1011B, Rosslyn Plaza E Building, 1621 North Kent Street, Rosslyn, Virginia, between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Paul M. Stockinger, Land Specialist, Lands Staff, Forest Service, USDA, P. O. Box 2417, Washington, DC 20013, (703) 235-2410.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service has begun a pilot management improvement program involving three National Forests. Under the pilot program, these National Forests test a variety of new management strategies and techniques in order to determine whether or not the proposals could result in improved operational

efficiency if applied agencywide. One pilot forest, the Mark Twain National Forest, headquartered in Rolla, Missouri, plans to waive certain special use rental fees on a trial basis, under limited conditions.

Current Forest Service regulations at 36 CFR 251.57 do not permit waivers of fees for management improvement, even on a trial basis; therefore, the Forest Service is amending 36 CFR 251.57 to allow the Mark Twain National Forest to waive the rental fees for special uses, but only if the administrative costs of collection are greater than the annual fee or, where applicable, the 5-year advance payment of the annual fee. The waiver is authorized until 1990, unless it is modified or removed before that time. The objective is to save the Federal Government money.

The Mark Twain National Forest will observe whether or not applications increase as a result of the lack of fees for various uses, will analyze the actual administrative collection costs involved, and will determine if any decrease in administrative collection costs causes an increase in another administrative cost area or areas. Finally, the Forest will determine whether or not such a program can be effectively administered. Upon completion of the test, the procedure will either be discontinued, or a general regulatory change will be proposed to make this waiver applicable to the entire Forest Service.

Regulatory Impact

This interim rule has been reviewed under USDA procedures and Executive Order 12291, and it has been determined that this regulation is not a major rule. The regulation will have little or no effect on the economy since only one activity on one National Forest is involved. The Forest Service anticipates that the fees initially waived under this interim rule may approximate $1,000 on an annual basis.

Small Business Entity and Information Collection Requirement Statement

The Assistant Secretary of Agriculture for Natural Resources and the Environment has determined that this rule does not have a significant economic impact on a substantial number of small entities because of its limited scope and application.

List of Subjects in 36 CFR Part 251

Recreation uses, Electric power, Mineral Resources, Rights-of-way, Water uses.

Therefore, for the reasons set forth in the preamble, Part 251 of Title 36 of the code of Federal Regulations is hereby amended as follows:

PART 251—[AMENDED]

1. Revise the authority citation for Part 251 to read as follows:

Authority: 16 U.S.C. 472; 16 U.S.C. 551; 30 U.S.C. 185; 43 U.S.C. 1761–1771.

2. In § 251.57, add a new paragraph (g) to read as follows:

251.57 Rental Fees

* * * * *

(g) In addition to the fee waiver provisions of paragraph (b) of this section, the Forest Supervisor of the Mark Twain National Forest may, until December 31, 1990, waive rental fees for special use permits when all of the following conditions are met:

(1) The rental fee established for the use reflects the current market value for the use;

(2) The cost of collecting the rental fee would exceed either the amount of the rental fee itself, or the amount of any advance lump sum payment of the rental fee as specified in paragraph (a) of this section, and

(3) The Forest Supervisor has exhausted all other reasonable alternatives, such as consolidated billing or similar cost saving measures.

* * * * *

Dated: April 18, 1986.

Peter C. Myers,

Assistant Secretary, National Resources and Environment.

[FR Doc. 86–10124 Filed 5–5–86; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[OW–10–FRL–3007–3]

Alaska Oil and Gas Conservation Commission Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State program.

SUMMARY: The State of Alaska has submitted an application under section 1425 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Class II injection wells. After careful review of the application, the Agency had determined that the State's injection well program meets the requirements of the Act and, therefore, approves it.

EFFECTIVE DATE: This approval shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on May 20, 1986. This approval shall become effective on June 19, 1986.

FOR FURTHER INFORMATION CONTACT: Harold Scott, MS 409, Environmental Protection Agency, Region X, 120 Sixth Avenue, Seattle, Washington 98101 PH: (206) 442–1846, (FTS) 399–1846.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. Section 1425 provides that for oil and gas related injection control programs the State may in lieu of the showing required under section 1422(b)(1)(A) demonstrate that the State program meets the requirements of section 1421(b)(1)(A)–(D) and represents an effective program to prevent underground injection which endangers drinking water sources. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Alaska was listed as needing a UIC program on March 19, 1980 (45 FR 17632). The State submitted an application under section 1425 on October 15, 1985, for a UIC program to regulate Class II injection wells to be administered by the Alaska Oil and Gas Conservation Commission (AOGCC).

On November 20, 1985, (50 FR 47761) EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the AOGCC. A public hearing was held on December 19, 1985, in Anchorage.

After careful review of the application, I have determined that the

portion of the Alaska program submitted by the AOGCC to regulate Class II injection well applicable on all lands in the State other than Indian lands meets the requirements of Section 1425 of the SDWA and, hereby, approve it. The effect of this approval is to estalish this program as the applicable underground injection control program under the SDWA for all Class II wells on all non-Indian lands in the State of Alaska.

This program replaces the existing EPA-administered program for all Class II wells (except on Indian lands). EPA promulgated a UIC program for Alaska on May 11, 1984, (49 FR 20200) in order to comply with the requirement of the SDWA to promulgate a Federally-administered program if a State-administered program cannot be approved within a certain time. Now that EPA has determined that the State-administered program meets all applicable Federal requirements, the Agency is withdrawing the EPA-administered program for Class II wells (except on Indian lands) and establishing the State-administered program as the applicable UIC program in the State, because of the preference in the SDWA for State Administration of UIC programs.

This approval will be codified in 40 CFR section 147.100. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference. These provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 147, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 147

Indian lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water Supply, and Incorporation by reference.

OMB Review

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

Certification under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. § 605(b), I certify that approval by EPA under section 1425 of the Safe Drinking Water Act of the application by the Alaska Oil and Gas Conservation Commission will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Dated: April 29, 1986.

Lee M. Thomas,

Administrator.

As set forth in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart C—Alaska

1. The authority for Part 147 continues to read as follows:

Authority: 42 U.S.C. 300h, 300h–1, 300–h–2, 300i, 300j–4, 300j–6, 300j–9, 6912 and 6921 to 6939a

2. Section 147.100 is revised to read as follows:

§ 147.100 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Alaska, other than those on Indian lands, is the program administered by the Alaska Oil and Gas Conservation Commission approved by EPA pursuant to Section 1425 of the SDWA. Notice of this approval was published in the **Federal Register** [May 6, 1986]; the effective date of this program is June 19, 1986. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Alaska. This incorporation by reference was approved by the Director of the **Federal Register** effective June 19, 1986.

(1) Alaska Statutes, Alaska Oil and Gas Conservation Act, Title 31, §§ 31.05.005 through 31.30.010 (1979 and Cum. Supp. 1984);

(2) Alaska Statutes, Administrative Procedures Act, Title 44, §§ 44.62.010 through 44.62.650 (1984);

(3) Alaska Administrative Code, Alaska Oil and Gas Conservation Commission, 20 AAC 25.005 through 20 AAC 25.570 (Supp. 1986).

(b) The Memorandum of Agreement between EPA Region 10, and the Alaska Oil and Gas Conservation Commission, signed by the EPA Regional Administrator on January 29, 1986.

(c) *Statement of Legal Authority.* Statement from the Attorney General of the State of Alaska, signed by the Assistant Attorney General on December 10, 1985.

(d) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[FR Doc. 86–10100 Filed 5–5–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 721

[OPTS–50518A; FRL–2926–9]

Benzoic Acid, 3, 3'-Methylenebis [6-Amino-, DI–2–Propenyl Ester; Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance which was the subject of premanufacture notice (PMN) P–82–438. The Agency believes that this substance may be hazardous to human health and the environment and that the uses described in this rule may result in significant human or environmental exposure.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on May 20, 1986 14 days. This rule shall become effective July 21, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room 543, 401 M St., SW., Washington, D.C. 20460. Toll free: (800–424–9065). In Washington, D.C.:

(554–1404). Outside the USA: (Operator-202–554–1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070–0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B) of TSCA, submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject generally to the same requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which are interpreted at 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722). In particular, these include the information submission requirements of section 5(b) and (d)(1) of TSCA. In addition, such notices are subject to the regulatory authorities of section 5(e) and (f) of TSCA. If EPA does not take regulatory action under section 5, 6, or 7 to control activities on which it has received a SNUR notice, section 5(g) requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance indentified in a proposed or final SNUR are subject to the export reporting provisions of TSCA section 12(b). The regulations that interpret section 12(b) requirements appear at 40 CFR Part 707. Persons who intend to import a substance identified in a final SNUR are subject to TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984, (49 FR 35011), EPA promulgated general provisions applicable to SNURS (40 CFR Part 721, Subpart A). The general provisions are discussed there in detail and interested persons should refer to that document for further information. These general provisions apply to this SNUR. On April 22, 1986, EPA proposed revisions to the general provisions (51 FR 15104), some of which would apply to this SNUR.

III. Summary of this Rule

The chemical substance which is the subject of this rule is identified as benzoic acid, 3,3'-methylenebis [6-amino-, di-2-propenyl ester, CAS No. 61386–02–5. It was the subject of PMN number P–82–438. EPA is designating the following as significant new uses of the substance: (1) Any use other than the use described in PMN P–82–438 and (2) any manner or method of manufacturing or processing the substance for the use described in PMN P–82–438 different than the manner or method described in PMN P–82–438.

IV. Background

The chemical substance which is the subject of this rule was the subject of a PMN designated P–82–438. The notice submitter claimed the following as confidential business information (CBI): Company name, the specific chemical name, the intended use, the production volume, and information concerning processing. The Agency, believing that the proposed generic chemical name would not provide adequate specificity for this proposed rulemaking, requested that the PMN submitter relinquish its CBI claim with regard to the specific chemical identity. The PMN submitter agreed, but retained its claim for all other items of information. For purposes of clarity, the substance is referred to in this preamble by its chemical name and PMN number.

The Agency proposed a SNUR for this substance which was published in the **Federal Register** of January 2, 1985 (50 FR 127). The background of the PMN and the reasons for proposing the SNUR are set forth in the preamble to the proposed rule.

V. Designation of Significant New Uses

To determine what would constitute significant new uses of this chemical substance, EPA considered relevant information about the toxicity of the substance and likely exposures and releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA is defining the significant new uses of P–82–438 as set forth in paragraph (a)(2) of § 721.205.

Given EPA's concerns about P–82–438, EPA believes the potential levels of exposure and release could result in significant risks to workers and/or the environment. Based on data available on structural analogues, primarily benzoic acid, 3,3'—methylenebis[6-amino-, dimethyl ester (MBMA) and 4,4' methylenedianiline, the Agency believes that any significant exposure would present a carcinogenic, hepatotoxic, teratogenic, reproductive, and neurotoxic risk to workers and toxic effects in aquatic organisms.

The Agency believes that the data described in this preamble and in the preamble to the proposed rule are sufficient to substantiate the contention that the significant new uses of P–82–438 present a potentially significant increase in the magnitude and type of exposure and release. Section 5(a)(2) of TSCA does not require the Agency to make either a "may present" or a "will present" risk finding with regard to satisfying the requirements for a significant new use. The statute imposes the requirement that the Agency provide for a "consideration of all relevant factors" in specifying a significant new use, including the four exposure related factors in section 5(a)(2). The Agency believes that a reasonable qualitative assessment of these factors was incorporated in the preamble of the proposed rule published in the **Federal Register** of January 2, 1985 (50 FR 127).

VI. Alternatives

In the proposed SNUR, EPA considered other possible approaches. These alternatives included the promulgation of a section 8(a) reporting rule, and/or a regulation under section 6. In the absence of comments and for the reasons discussed in the preamble to the proposed rule, the Agency has elected to proceed with the promulgation of a SNUR covering significant new uses of P–82–438.

VII. Exemptions to Reporting Requirements

The Agency has codified, in § 721.19, general exemption provisions covering SNUR reporting. In the case of P–82–438, the terms of § 721.19 apply without change.

On April 22, 1986, EPA issued amendments to 40 CFR Part 720, the premanufacture notification rule (51 FR 15096), including revisions of §§ 720.36 and 720.78(b) which contain detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities by manufacturers, importers, and processors of substances identified in SNURs qualify under this exemption. On April 22, 1986, EPA proposed amendments to 40 CFR Part 721 which would redesignate § 721.19 as § 721.18 and which would contain a new § 721.19 establishing detailed rules for the section 5(h)(3) exemption for SNURs and which would ultimately apply to this SNUR. The proposed new § 721.19 is similar to the revised §§ 720.36 and 720.78(b). Until the SNUR amendments

are promulgated, manufacturers, importers, and processors of chemical substances identified in SNURs may look to §§720.36 and 720.78(b) and the proposed new § 721.19 for guidance in complying with the section 5(h)(3) exemption.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure and/or environmental release during manufacture and processing of the substance, section 21(a) of TSCA prohibits EPA from requiring reporting of such manufacture or processing for a significant new use. However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting.

The term "manufacture solely for export" is defined in § 720.3(s) of the PMN rule; an amendment clarifying this definition was issued on April 22, 1986 (51 FR 15096). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus, persons, would be exempt from reporting under this SNUR if they manufacture or process the substance solely for export from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S. except in small quantities solely for research and development; (2) processing is restricted to sites under the control of the manufacturer or processor; and (3) distribution in commerce is limited to purposes of export or processing solely for export. If a person manufactured or processed the substance both for export and for use in the U.S., the manufacturing or processing activity would not be "solely for export" because the manufacture and processing would be for use in the U.S.

VIII. Applicability To Uses Which May Have Occurred Before Promulgation of Final Rule

To establish a significant new use rule, the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substance in question has undergone premanufacture review. The Agency received no information that the significant new uses are ongoing. Therefore, at this time, the Agency believes that these uses are significant new uses.

As indicated in the proposal, EPA has found that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use of as the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating a proposed significant new use before the rule became final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, even if the substance was manufactured, imported, or processed for the significant new uses between proposal and promulgation of this rule, such activities may not continue after the effective date of this rule. Any such person must cease such activity pending compliance with all SNUR notice requirements.

IX. Determining When Use Is Subject to this Rule

The Agency has designated two significant new uses of P–82–438 which include CBI. The first is any use other than the use described in the PMN, and the second is any manner or method of manufacturing or processing P–82–438 for the use described in the PMN different than the manner or method described in the PMN. EPA has concluded that it is appropriate to keep the significant new uses confidential to protect the claims of the original PMN submitter. Therefore, EPA will only reveal one of the significant new uses to a manufacturer, importer, or processor who has shown a *bona fide* intent to manufacture, import, or process the substance under the procedure described in § 721.205(b)(1). This will enable the manufacturer, importer, or processor to determine whether a SNUR notice will be necessary.

To determine whether its intended use of the substance is a significant new use, a manufacturer, importer, or processor of the substance, in addition to complying with the requirements of 40 CFR 721.6, would have to describe its intended use of the substance in its *bona fide* submission under § 721.205(b)(1). If the use described in the *bona fide* submission would be a significant new use under § 721.205(a)(2)(i), EPA would so inform the submitter but would not reveal the use described in P–82–438. If the use described in the *bona fide* submission were the use described in P–82–438, EPA would so inform the submitter and would also reveal the manner of manufacturing the processing described in P–82–438 for that use. Thus the *bona fide* submitter could determine whether a significant new use notice would be necessary under § 721.205(a)(2)(ii). In this way, EPA will minimize the disclosure of CBI about the use and manufacturing and processing methods described in P–82–438 to the extent necessary to implement the SNUR.

X. Test Data and Other Information

EPA recognizes that, under TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health and environmental risks that may be posed by a significant new use of this substance, EPA encourages possible SNUR notice submitters to test the substance's potential for carcinogenic, hepatotoxic, teratogenic, reproductive, and neurotoxic effects in humans and toxic effects in aquatic organisms. The Agency believes that the results of a 2-year rodent bioassay would adequately characterize possible carcinogenic effects of the substance. A more reasoned evaluation of hepatotoxic and neurotoxic effects could be made using data generated in a 90-day subchronic study in the rodent. Similarly, rodent tetratology and 2-generation reproduction studies with P–32–438 would allow a more reasoned evaluation of those risks. A 96-hour LC_{50} study conducted on daphnia would permit a more reasoned evaluation of risks to aquatic species. These studies may not be the only means of addressing the potential risks.

If a SNUR notice is submitted for a use involving significant human exposure or environmental release without adequate test data, EPA is likely to take action under section 5(e). As an alternative to testing the substance, potential notice submitters may want to consider the use of engineering controls and/or personal protective equipment to reduce exposure to or release of the substance.

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this prenotice consultation, EPA will discuss the test data it believes necessary to evaluate significant new uses of the substance. Data should be developed and submitted in accordance with the TSCA good laboratory practices regulations at 40 CFR Part 792.

EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new uses. In addition, EPA

urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

XI. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for this substance. This evaluation is summarized in the preamble to the proposed rule published in the Federal Register of January 2, 1985 (50 FR 127).

The Agency's complete economic analysis is available to the public file.

XII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50518A). A public version of this record from which CBI has been deleted is available to the public from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OTS Reading Room, Rm. E–107, 401 M Street SW., Washington, D.C.

The record includes basic information considered by the Agency in developing this rule. The record now includes the following:

1. The PMN for the substance.
2. The Federal Register notice of receipt of the PMN.
3. The proposed SNUR.
4. The toxicity support document.
5. The economic analysis of this SNUR.

XIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, for the reason explained in the preamble to the proposal for this rule, EPA believes that the cost will be low. In addition, because of the nature of the rule and the substance subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the suggested testing and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage innovation of high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this rule are likely to be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial even if all the potential significant new uses were developed by small companies. EPA expects to receive few SNUR notices for the substance.

C. Paperwork Reduction Act

Information collection requirements contained in this rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0012.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: April 28, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 721—[AMENDED]

Therefore, 40 CFR Part 721 is amended as follows:

1. The authority citation for Part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.205 to read as follows:

§ 721.205 Benzoic acid, 3,3'-methylenebis [6 amino-, di-2-propenyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance, referred to by its CAS Number and chemical name, is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: 61386–02–5, Benzoic acid, 3,3'-methylenebis [6 amino-, di-2-propenyl ester.

(2) The significant new uses are: (i) Any use other than the use described in Premanufacture Notice P–82–438.

(ii) Any manner or method of manufacturing or processing the substance for the use described in Premanufacture Notice P–82–438 different than the manner or method described in Premanufacture Notice P–82–438.

(b) *Special provisions.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Determining whether a specific use is subject to this rule.* (i) A person who intends to manufacture, import, or process the chemical substance identified in paragraph (a)(1) of this section may ask EPA whether the use for which the person intends to manufacture, import, or process the substance is a significant new use under paragraph (a)(2)(i) of this section. EPA will answer such an inquiry only if EPA determines that the person has a *bona fide* intent to manufacture, import, or process the chemical substance.

(ii) To establish a *bona fide* intent to manufacture, import, or process the chemical substance, the person must submit to EPA:

(A) All materials and statements required under § 721.6.

(B) The specific use for which the person intends to manufacture, import, or process the chemical substance.

(iii) EPA will review the information submitted by the person under this paragraph to determine whether the person has a *bona fide* intent to manufacture, import, or process the chemical substance.

(iv) If EPA determines that the person has a *bona fide* intent to manufacture, import, or process the chemical substance, EPA will tell the person whether the use for which the person intends to manufacture, import, or process the substance is a significant new use under paragraph (a)(2)(i) of this section. If EPA tells the person that the intended use is not a significant new use under paragraph (a)(2)(i) of this section, EPA will tell the person what activities would constitute a significant new use under paragraph (a)(2)(ii) of this section.

(v) A disclosure to a person with a *bona fide* intent to manufacture, import, or process the chemical substance of the significant new uses subject to this section will not be considered public disclosure of confidential business information under section 14 of the Act.

(vi) EPA will answer an inquiry on whether a particular use is subject to this section within 30 days after receipt of a complete submission under paragraph (b)(1) of this section.

(2) [Reserved].

(Approved by the Office of Management and Budget under control number 2070–0012)
[FR Doc. 86–10102 Filed 5–5–86; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 180

[PP 5E3210/R824; FRL–3007–1]

Pesticide Tolerances for Norflurazon

Correction

In FR Doc. 86–9050, appearing on page 15323, in the issue of Wednesday, April 23, 1986, make the following correction:

In the second column, eleventh line, "alpha-trifluro-*m*-tolyl" was misspelled.

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 442

[BERC–352–F]

Medicaid Program; Fire Safety Standards for ICFs/MR

Correction

In FR Doc. 86–8647, beginning on page 13224, in the issue of Friday, April 18, 1986, make the following correction:

On page 13227, third column, § 442.508 (b)(1)(iii), second line, "1987" should read "1967".

BILLING CODE 1505–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 78–374; FCC 86–133]

Deregulation of Domestic Receive-Only Satellite Earth Stations

AGENCY: Federal Communications Commission.

ACTION: Report and Order; Procedural changes.

SUMMARY: In 1979, the Commission initiated a proceeding to improve the efficacy of the receive-only earth station licensing program through the elimination of unnecessary regulatory policies. The docket was left open to consider additional improvements to the program. The purpose of this *Second Report and Order* is to close the docket and to further streamline the processing of receive-only earth station applications by adopting certain improvements to the licensing program. Pursuant to this Commission action, applicants no longer need submit small antenna performance or interference analyses with their receive-only earth station applications. The Commission has also decided to discontinue the unnecessary practice of putting applications for assignment of license and transfer of control of receive-only earth station facilities on public notice. Instead, the Commission will only issue notice of their grant. Finally, the Commission will not require or accept any applications for any receive-only facility in the 12 GHz band. Instead, operators are encouraged to provide notification directly to the secondary operators of the band.

EFFECTIVE DATE: March 25, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Wilbert E. Nixon, Jr., Domestic Facilities Division, Common Carrier Bureau, (202) 634–1624.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, CC Docket 78–374, adopted March 25, 1986, and released April 10, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC dockets branch (room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Second Report and Order

1. In the Notice of Inquiry (*Notice*), CC Docket No. 78–374, 70 FCC 2d 1460 (1979), the Commission initiated this proceeding to improve the efficacy of the receive-only earth station licensing program through the elimination of unnecessary regulatory policies. The Commission described the workings of the receive-only licensing program at that time and solicited public comment on the benefits and detriments of that mandatory licensing program through the elimination of unnecessary regulatory policies. The Commission described the workings of the receive-only licensing programs at the time and solicited public comment on the benefits and detriments of that mandatory licensing program. In the Deregulation of Receive-Only Earth Stations, 74 FCC 2d 205 (1979), the Commission addressed those issues raised in the *Notice*, eliminated the mandatory aspects of the program and adopted: (1) Immediate implementation of a voluntary licensing program for receive-only earth stations; (2) complete deregulation under Title III of the Act of the receive-only earth stations; and (3) streamlining of the licensing procedures for those who decide to obtain a receive-only earth station license to secure protection from interference. This docket was left open to consider additional improvements to the program. The purpose of the *Second Report and Order* is to announce those additional improvements and to close the docket.

2. The Commission, in resolving other broader issues, has made several decisions affecting receive-only earth station licensing regulations. The *Second Report and Order* compiles and reiterates earlier Commission decisions which have an impact on receive-only earth station licensing. In light of its experience and its decisions in other proceedings, the Commission decided to eliminate certain application requirements and further simplify the receive-only earth station licensing program. The following is a categorical breakdown of the compilation of current Commission decisions and policies with regard to receive-only earth station regulation.

3. In *American Broadcasting Companies, Inc.*, 62 FCC 2d 901 (1977) (*ABC*), the Commission required applicants, in the form of a supplemental analysis, to demonstrate the acceptability of television receive-only earth station facilities with antennas between 4.5 and 9.0 meters in diameter on the basis of signal quality regulations for cable television use. Since *ABC*, the Commission has revised its rules to specify signal-to-noise criteria for cable television systems only for guideline purposes. For that reason, the Commission no longer requires the filing of the small antenna performance analysis with the receive-only earth station application.

4. In *ABC*, the Commission determined that small diameter antennas could be routinely licensed if a showing were made that their use was consistent with desirable orbital spacings between domestic satellites. In Licensing of Space Stations in the Domestic Fixed-Satellite Service 54 Rad. Reg. 577 (1983), the Commission adopted a reduction in orbital separation to 2° in both the 4/6 GHz and 12/14 GHz bands for the domestic fixed-satellite service. This decision was based on the new earth station antenna performance standard of §25.209 of the rules. Operators may choose the type of antenna performance they desire by the type of earth station equipment they purchase. Therefore, the Commission

will no longer perform case-by-case reviews pursuant to *ABC*. The supplemental interference analysis currently being filed with receive-only earth station applications will no longer be required.

5. To date, the Commission has required assignors and transferors of receive-only licenses to file FCC Forms 702 and 704, respectively. Applications are put on public notice for 30 days and routinely granted a few days after the close of the public notice period as long as grant of the application is not opposed. There is no provision in the Commissions Act requiring the public notice be given of the filing of these applications. Therefore, the Commission will discontinue this unnecessary and resource-consuming practice. Instead, the Commission will only issue notice of their grant.

6. In the frequency band 11.7–12.2 GHz (12 GHz), the only radio service given primary frequency allocation status is the fixed-satellite service downlink. All other services are secondary in relation to the fixed-satellite receiving facility. Because receive-only facilities are licensed only to protect the facilities from harmful interference, there is no reason to require a formal application and licensing procedure to protect them from harmful interference caused by the transmitters licensed on a secondary basis. Therefore, the Commission will not require or accept any applications for any receive-only facility in the 12 GHz band. Instead, operators are encouraged to provide notification directly to the secondary operators of this band.

7. A separate public notice will be released in accordance with this *Second Report and Order* describing the Commission's policy regarding receive-only earth station licensing. The public notice will also detail filing requirements for receive-only earth station applications. No new information is being requested from applicants. In fact, less information is now required. The purpose of the public notice is to compile and restate the simplified filing requirements and to encourage applicants to submit their applications in a format that will aid the Commission's staff in processing.

8. Because the benefits of these procedural rule changes would be made available to the public immediately, and these changes in policy relieve certain restrictions, the *Second Report and Order* shall be effective within less than thirty days from the time its summary is published in the **Federal Register.** 5 U.S.C. 553(d)(1).

9. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

10. Accordingly, It is ordered that the requirements of receive-only earth station applicants specified in paragraphs 6 and 8 are eliminated and the application procedures specified in paragraphs 11, 12 and 16 above are adopted.

11. It is further ordered that these procedures are effective March 25, 1986.

12. It is further ordered that the proceedings in CC Docket No. 78–374 are terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–9650 Filed 5–5–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 68

[CC Docket No. 81–216; CC Docket No. 84–490]

Connection of Terminal Equipment to the Telephone Network

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects several typographical errors and provides missing phrases in a document concerning connection of terminal equipment to the telephone network (CC Docket No. 81–216; RM–2845 et al.; CC Docket No. 84–490; RM–4458; FCC 85–580) which were published in the **Federal Register** of January 9, 1986 (51 FR 929).

FOR FURTHER INFORMATION CONTACT: William H. von Alven, Common Carrier Bureau (202) 634 1833.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 68

Communications, common carriers, Communications equipment, Federal Communications Commission, telephone.

In the matter of corrections to part 68 of the Commission's Rules (47 CFR Part 68); CC Docket No. 81–216, CC Docket No. 84–490.

Erratum

Released: April 24, 1986.

1. The following corrections are made in the Appendix of the Report and Order in the captioned proceeding released November 4, 1985. (*See*, 51 FR 929, January 9, 1986). The corrections are underscored.

§ 68.2 [Corrected]

2. Section 68.2(a)(7): Should read in part ". . . ringdown *or* inband . . ." instead of ". . . ringdown on inband . . .".

Section 68.2(h)(1): Should read in part ". . . voiceband private . . ." rather than ". . . voiceband *and* private . . ."; and ". . . connected to *that* private line . . ." line . . ." rather than ". . . connected to hat private line . . .".

§ 68.302 [Corrected]

3. Section 68.302(f): Should read in part ". . . § 68.310, and *for* terminal equipment . . ." instead of § 68.310, and or terminal equipment . . .".

§ 68.306 [Corrected]

4. Section 68.306(a)(8): Should read "voiceband" instead of "vioceband".

§ 68.308 [Corrected]

5. Section 68.308(b)(1)(i): Should read in part ". . . when *averaged over* . . ." instead of "when average over . . .".

6. Section 68.308(b)(5)(i)(A): Should read in part ". . . terminating *set* losses" instead of "terminating losses . . .".

7. Section 68.308(d): Insert missing asterisk: "The weighted root-mean-squared voltage* . . ." The associated footnote should be added: "* Note: Average magnitudes may be used for signals that have peak-to-RMS ratios of 20 dB and less. RMS limitations must be used instead of average values if the peak-to-RMS ratio of the interfering signal exceeds this value."

8. Section 68.308 (g)(1), (g)(2), and (g)(3) are corrected as follows:

§ 68.308 Signal power limitations.

* * * * *

(g) * * *

(1) All registered terminal equipment, except equipment to be used on LADC, and all registered protective circuitry must comply with the limitations when connected to as termination equivalent to the circuit depicted in Figure 68.308(b) and *when placed in all operating states of the equipment except* during network control signaling. For message registration in the ground return mode, a termination equivalent to Figure 68.308(c) is required, and metallic voltage limitations dc not apply. LADC registered terminal equipment must comply with the matallic voltage limitations when connected to the circuits of Figure 68.3(k) and must comply with the longitudinal limitations when connected to the circuits of Figure 68.308(b), as indicated.

(2) All registered terminal equipment and registered protective circuitry must comply with the limitations in the offhook state over the range of loop current that would flow with the equipment *connected* to an appropriate loop simulator circuit.

(3) Registered terminal equipment and registered protective circuitry with provision for through-transmission from other equipments shall comply with the limitations with a 1000 Hz tone applied *from a 600-ohm source (or, if appropriate, a source which reflects a 600-ohm impedance across tip and ring) at the maximum level that would be applied* during normal operation. Registered protective circuitary for data shall also comply with the tone level 10 dB higher than that expected during normal operation.

* * * * *

§ 68.310 [Corrected]

9. Section 68.310(e)(i)(1): Should read in part ". . . transmit and receive *pairs* of the 4-wire . . ." instead of ". . . transmit and receive parts of the 4-wire. . ."; also Figure 68.130(j) should read *Figure 68.310(j).*

10. Section 68.314(d) is corrected as follows:

§ 68.314 Billing protection.

* * * * *

(d) *Signaling interference requirements*

(1) Terminal equipment connected to the Public Switched Network or private lines identified in § 68.2(a) (2) and (3). Registered terminal equipment and registered protective circuitry shall not deliver signals into a 2-wire loop simulator circuit or the transmit and receive pairs of a 4-wire loop simulator circuit or a 600-ohm termination (where appropriate) from sources internal to the registered equipment or circuitry, with energy in the 2450 to 2750 Hertz band unless an equal amount of energy is presented in the 800 to 2450 Hertz band.

(2) Registered terminal equipment for connection to subrate or 1.544 Mbps digital services shall not deliver digital signals to the telephone network with encoded analog content energy in the 2450 to 2750 Hertz band unless at least an equal amount of encoded analog energy is present in the 800 to 2450 Hertz band.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary,

[FR Doc. 86-9856 Filed 5-5-86; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 504, 514, 515, and 553

[APD 2800.12 CHGE 25]

General Services Administration Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to revise Part 501 to modify the requirements for training under the contracting officer warrant program; to revise Part 504 to clarify the requirements for use of the uniform procurement instrument identification system; to add Section 514.408-1 to provide for the use of a new GSA Form 3577, Notification of Contract Award, to notify an unsuccessful bidder that its bid was not accepted; to revise Parts 514 and 515 to emphasize the need for limiting access to Government cost estimates, to provide guidance on the use of estimates in negotiating fair and reasonable prices; and to revise Part 553 to illustrate the new GSA Form 3577, Notification of Contract Award, and the revised GSA Form 3501, Solicitation Provisions (Sealed bid) and GSA Form 3502, Solicitation Provisions (Negotiated).

EFFECTIVE DATE: April 17, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations (VP) on (202) 566-1224.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1985, the General Services Administration published in the **Federal Register** (50 FR 51435) GSAR Notice No. 5-127 inviting comments from interested parties on proposed changes to the regulation and provided a 30-day comment period. Comments from various GSA offices were received, reconciled, and incorporated, when appropriate, in this final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exception applies to this rule. The General Services Administration certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The rule primarily relates to the internal operations of the agency and will not have a significant impact on contractors and offerors. Therefore, no regulatory flexibility analysis has been prepared. This rule does not contain any information collection requirements which are subject to OMB approval under the Paperwork Reduction Act 44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Parts 501, 504, 514, 515, and 553

Government procurement.

1. The authority citation for 48 CFR Parts 501, 504, 514, 515, and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 501.603-2 is amended to revise paragraphs (c)(1) and the introductory paragraph of (c)(3); to revise paragraph (c)(3)(ii)(E); by redesignating and revising subparagraphs (F) thru (K) as (G) thru (L) and adding a new subparagraph (F); to revise paragraph (c)(3)(v)(C) and adding a new subparagraph (D); to revise paragraph (c)(4) and the introductory paragraph of (c)(5); to redesignate paragraph (c)(6) as (c)(7) and to add a new paragraph (c)(6) to read as follows:

501.603-2 Selection.

(c) * * *

(1) *Knowledge and skill.* Written statements of fact must be presented by supervisors of CO candidates to the warrant board, covering the knowledge and abilities of candidates and their specific level of skill which are appropriate to the activity in the following areas:

* * * * *

(3) *Mandatory training requirements for contracting officer candidates.* A candidate must complete the minimum core training required for the warrant levels described below. To qualify for a intermediate level warrant, a candidate must complete the basic, intermediate, and senior level training in order to qualify for a senior level warrant. Supervisors are responsible for providing their employees with advice and assistance necessary to complete this required training. Mandatory training includes the following general topics as a minimum:

* * * * *

(ii) *Intermediate level* (Does not apply to realty leasing and sales personnel.)

* * * * *

(E) Cost and Price Analysis or Cost Analysis—40 hours,

(F) GSA Price Analysis—40 hours,

(G) Government ADP Resource Acquisition—40 hours (Applicable to ADP acquisition personnel only.)

(H) Termination Settlements—40 hours,

(I) Services Contracting—40 hours,

(J) Public Utility Contracts—40 hours (Applicable to personnel handling public utility procurements.)

(K) Architect-Engineer Contracting—40 hours (Applicable to personnel handling Architect-Engineer service procurements.)

(L) Construction Contracts—40 hours. (Applicable to personnel handling procurement of construction.)

* * * * *

(v) *Realty Leasing Personnel.*

* * * * *

(C) Cost and Price Analysis or Pricing of Lease Proposals—40 hours, and

(D) GSA Price Analysis—40 hours.

* * * * *

(4) *Substitution of experience for training.* Individuals currently serving and classified in 1102 positions for an uninterrupted period of three years will not be required to take the basic level courses under the COWP if they are proposed for intermediate or senior level warrants.

(5) *Substitute courses.* Training courses of equivalent content will be allowable substitutes. Personnel involved in motor pool operations may substitute the GSA Fleet Management Procurement course for the requirement for 40 hours of training in small purchases and Federal supply schedules. Courses from the following sources are considered to be equivalent provided the training meets the minimum hours required in (c) of this subsection:

* * * * *

(6) *Refresher training.* Contracting officers in the Federal Supply Service are encouraged to attend the Contract Quality Assurance course (40 hours) in fulfilling the continuing education requirements of § 501.603–3(c).

(7) *Tests.* Tests administered either by the GSA Office of Civil Rights, Organization, and Training or by DOD training facilities may be taken as an alternative to training, to demonstrate career knowledge. The GSA training office may be contacted for referral to DOD testing facilities such as Fort Lee, VA. Other tests may be considered on a case by case basis.

3. Section 501.603–3 is amended to revise paragraph (a) to read as follows:

501.603–3 Appointment.

(a) The recommending official may nominate candidates for contracting officer warrants to the designating official subject to the approval of the warrant board. Only the Administrator or the Associate Administrator for Acquisition Policy is authorized to sign the Standard Form 1402, Certificate of Appointment.

* * * * *

4. Section 504.7001 is revised to read as follows:

504.7001 Uniform procurement instrument identification.

This section prescribes procedures for the identification of GSA contracts, orders, and other procurement instruments regardless of dollar threshold and applies to all GSA contracting activities except those within the Federal Supply Service.

5. Section 504.7001–1 is amended to revise paragraph (b) to read as follows:

504.7001–1 Policy.

(a) * * *

(b) Identification should be placed in the contract number block provided on the applicable forms. If a space is not reserved for the prescribed number, it should be placed in the upper right-hand corner of the form.

* * * * *

6. Section 504.7001–2 is amended by deleting from paragraph (c) items A and N and revising items F, H, and K and paragraph (f) is amended by revising items C and D as follows:

504.7001–2 Basic procurement instrument identification number.

* * * * *

(c) The fifth character shall be a capital letter assigned to the service/office preparing the instrument as follows:

A Office of Acquisition Policy and Management Systems [Deleted]

* * * * *

F Federal Supply Service

* * * * *

H Office of Associate Administrator for Administration

* * * * *

K Information Resources Management Service

* * * * *

N National Archives and Records Service [Deleted]

(f) The tenth character shall be a capital letter assigned to indicate the type of procurement instrument code as follows:

* * * * *

C Contracts, including letter contracts, contracts referencing basic agreements, or basic ordering agreements, excluding indefinite delivery type contracts.

D Indefinite delivery contracts, including definite quantity, requirements contracts and indefinite quantity contracts.

* * * * *

7. Section 504.7001–3 is amended by revising the introductory paragraph, paragraph (a) and the introductory text of paragraph (e) to read as follows:

504.7001–3 Order and call instrument identification number.

Delivery orders under indefinite delivery contracts (orders), and orders under schedule contracts must be identified by an "11" character alphanumeric identification number placed in the order number block of the order form. The basic indefinite delivery or schedule contract number must be placed in the contract number block of the order form.

(a) The first character shall be a capital letter assigned to the service/office issuing the order. This code will be identical to those assigned in paragraph (c) of GSAR 504.7001–2.

* * * * *

(e) The eighth through the eleventh characters shall be the serial number of the order. Each contracting office shall maintain its own serial number. Alphanumeric numbers shall be used when more than 9999 numbers are required. Alphanumeric numbers shall be serially assigned with an alpha in the first position followed by the numeric serial number. The following sequences, excluding alpha I or O shall be used:

* * * * *

8. The Table of Contents for Part 514 is amended to add new entries for Sections 514.211 and 514.408–1 as set forth below.

PART 514—SEALED BIDDING

Sec.

Subpart 514.2—Solicitation of Bids

* * * * *

514.211 Release of acquisition information.

* * * * *

Subpart 514.4—Opening of Bids and Award of Contract

* * * * *

514.408–1 Award of unclassified contracts.

Authority: 40 U.S.C. 486(c).

9. Section 514.205–1 is amended by revising paragraph (a) to read as follows:

514.205–1 Establishment of lists.

(a) Solicitation mailing lists shall be established in accordance with FAR

14.205. Contracting officers within FSS shall use the computerized central solicitation mailing list maintained by Region 8 for supplies and services for all procurements expected to exceed the small purchase limitations. Other GSA services/offices may maintain local lists. Services/offices that maintain local mailing lists shall inform the GSA Business Service Center of the list and provide related information regarding the list.

* * * * *

10. Section 514.211 is added to read as follows:

514.211 Release of acquisition information.

Access to information concerning the Government cost estimate must be limited to Government personnel whose official duties require knowledge of the estimate. After award, the total amount of the Government estimate may be revealed, upon request, to those firms or individuals who submitted bids. Information on the basis for calculation of the estimate may not be released at any time.

11. Section 514.408–1 is added to read as follows:

514.408–1 Award of unclassified contracts.

The GSA Form 3577, Notification of Contract Award, may be used on an optional basis to notify unsuccessful bidders, as required by FAR 14.408–1, that their bids were not accepted. When award is made to other than an apparent low bidder(s), the form should not be used to notify the unsuccessful low bidder(s). Such bidder(s) must be notified of the reasons for rejection of their bids.

12. Section 515.803 is revised to read as follows:

515.803 General.

Access to information concerning the Government cost estimate must be limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent necessary to arrive at a fair and reasonable price. After award, the total amount of the independent Government estimate may be revealed, upon written request, to those firms or individuals who submitted proposals.

13. Section 515.805–5 is revised to read as follows:

515.805–5 Field pricing support.

(a) Within GSA, "field pricing support" is provided by the Assistant Inspector General-Auditing, or the Regional Inspector General-Auditing, as appropriate.

(b) When applying the threshold at FAR 15.805–5 for requesting field pricing support, the value of the proposal (including any priced options) must be used.

14. The Table of Contents for Part 553 is amended to add a new entry for Section 553.370–3577 as set forth below:

PART 553—FORMS

Sec.

Subpart 553.3—Illustration of Forms

* * * * *

553.370–3577 GSA Form 3577, Notification of Contracting Award.

* * * * *

Authority: 40 U.S.C. 486(c).

Editorial Note: The forms listed above are illustrated in and made a part of the regulation. However, the forms are not illustrated in the **Federal Register** or the Code of Federal Regulations. Individual copies may be obtained from any GSA contracting activity or the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Washington, DC 20405.

16. Section 553.173 is amended to revise paragraph (c) to add GSA Form 3577 to read as follows:

553.173 Responsibility for maintenance of forms.

(c) * * *

GSA Form Number	Responsible office
3577	V

Dated: April 17, 1986.

Richard H. Hopf, III,

Acting Associate Administrator for Acquisition Policy.

[FR Doc. 86–10093 Filed 5–5–86; 8:45 am]

BILLING CODE 6820–61–M

48 CFR Parts 525 and 552

[GSAR AC–86–5]

Restrictions on Procurement of Hand or Measuring Tools

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular temporarily amends sections §§525.105 and 552.225 of the General Services Administraton Acquisition Regulation (GSAR), 48 CFR Ch. 5 (APD 2800.12), to reflect procurement restrictions in the current GSA and DOD Appropriation Act on the acquisition of hand or measuring tools. The intended effect is to implement the appropriation restrictions and provide procedures and guidance to GSA contracting activities.

DATES: *Effective:* April 18, 1986.

Expiration: October 17, 1986, unless cancelled earlier.

Comment: Comments must be submitted on or before June 5, 1986.

ADDRESS: Comments may be submitted to Mrs. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations, 18 and F Sts., NW, Washington, DC 20405, (202) 523–3822.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano, Office of GSA Acquisition Policy and Regulations, (202) 523–4763.

SUPPLEMENTARY INFORMATION: Pursuant to Section 22(d) of the Office of Federal Procurement Policy Act, as amended, a determination has been made to waive the requirement for publication of procurement procedures for public comment before the regulation takes effect. The need to comply with the FY 1986 Appropriation Act creates an urgent and compelling circumstance which makes advance publication impracticable. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies 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.) because it represents a continuation of existing policy. Therefore, no regulatory flexibility analysis has been prepared. This circular does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 525 and 552

Government procurement.

PARTS 525 AND 552—[AMENDED]

1. The authority citation for 48 CFR Parts 525 and 552 continue to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 525 and 552 are amended by the following Acquisition Circular:

General Services Administration Acquisition Regulation Acquisition Circular AC–86–5

To: All contracting activities
Subject: Restrictions on Procurements of Hand or Measuring Tools

1. *Purpose.* This Acquisition Circular temporarily amends Sections 525.105 and 552.225 of the General Services Administration Acquisition Regulation (GSAR), 48 CFR Ch. 5 (APD 2800.12), to reflect procurement restrictions in the current GSA and DOD Appropriation Acts on the acquisition of hand or measuring tools.

2. *Cancellation.* AC–85–3 and supplement 1 are cancelled.

3. *Background.* The FY 1986 GSA Appropriation Act continues the procurement restrictions on the acquisition of hand or measuring tools and stainless steel flatware from the FY 1985 GSA Appropriation Act. Also, the FY 1986 DOD Appropriation Act continues the FY 1985 DOD Appropriation Act restrictions for acquisitions of electric and air-motor driven hand tools. All other procurement restrictions on the acquisition of hand or measuring tools in support of DOD requirements that were in the FY 1985 DOD Appropriation Act are continued in the FY 1986 DOD Appropriation Act. The procurement restrictions in the FY 1986 DOD Appropriation Act shall be applied in GSA procurements where such procurements satisfy requirements that are predominantly DOD requirements.

4. *Effective date.* April 18, 1986.

5. *Expiration date.* This circular expires October 17, 1986, unless cancelled earlier.

6. *Reference to regulation.* Sections 525.105–70(c), 525.105–71, and 552.225–71 of the GSAR.

7. *Explanation of change.*

a. Section 525.105–70(c) is amended as follows to cite the FY 1986 GSA Appropriation Act:

525.105–70 Evaluating offers—Hand or measuring tools for other than the Department of Defense.

(a) * * *

(b) * * *

(c) *GSA Appropriation Act restrictions.* Section 101(h) of Pub. L. 99–190 [H.J. Res. 465] December 19, 1985, makes GSA appropriations subject to H.R. 3036 to the extent and in the manner provided for in the conference report and joint explanatory statement of the committee of conference (House Report 99–349) as passed by the House of Representatives and the Senate on November 7, 1985, as if enacted into law. Section 506 of H.R. 3036 continues the Congressional policy contained in previous GSA Appropriation Acts that require GSA purchases of hand or measuring tools be from domestic sources or be made in accordance with procedures prescribed by section 6–104.4(b) of the Armed Services Procurement Regulation (ASPR) (now the Defense Acquisition Regulation) as such regulation existed on June 15, 1970, and further provides that a factor of 75 percent in lieu of 50 percent shall be used for evaluating foreign source end products in § 6–104.4(b).

* * * * *

b. Section 525.105–71 is retitled and amended as follows to cite the FY 1986 DOD Appropriation Act, codify GSA's determination to apply the current DOD Appropriation Act restrictions in GSA procurements for requirements that are predominantly DOD requirements, and provide policy guidance on the requirements for full and open competition in acquisitions where the current DOD Appropriation Act restrictions are to be applied:

525.105–71 Acquisition of hand or measuring tools for the Department of Defense (DOD).

(a) *DOD Appropriation Act restrictions.*

(1) Congressional policy on DOD's acquisition of hand or measuring tools is expressed in Section 101(a) of Pub. L. 99–190 [H.J. Res. 465], December 19, 1985, which contains the DOD Appropriation Act of 1986, and the House of Representatives Report No. 98–1086 on the DOD Appropriation Bill for FY 1985. The following restrictions applicable to DOD's acquisition of hand or measuring tools are set forth in the current DOD Appropriation Act:

(i) Except for electric or air-motor driven hand tools, DOD is prohibited from acquiring hand or measuring tools that are not wholly produced or manufactured in the United States.

(ii) Electric or air-motor driven hand tools shall be considered of domestic origin if the cost of components produced or manufactured in the United States exceeds 75 percent of the cost of all components in the end product.

(2) Pursuant to subsection 6–104.4(d)(3)(ii) of the Armed Services Procurement Regulation (now the Defense Acquisition Regulation) as it existed on June 15, 1970, GSA has determined that accepting offers from firms offering foreign products is not in the national interest when DOD is the predominant user of the items being procured. As a result, the current DOD Appropriation Act restrictions shall apply in GSA procurements rather than the current GSA Appropriation Act restrictions where such procurements satisfy requirements that are predominantly DOD requirements. The basis for this determination are:

(i) The current DOD Appropriation Act prohibits DOD's acquisition of foreign hand or measuring tools. This restriction also applies when DOD requisitions such items through the GSA stock program.

(ii) It is not feasible for GSA to maintain separate supply systems to satisfy the requirements of civilian and military agencies.

(iii) The current GSA Appropriation Act prescribes the use of the procedures in the ASPR 6–104.4, dated June 15, 1970. These procedures provide that offers may be rejected when it is considered necessary for reasons of national interest.

(3) Acquisitions of hand or measuring tools, pursuant to the current DOD Appropriation Act restrictions, meet the requirements for full and open competition in FAR Subpart 6.1 if all responsible sources offering domestic end products, as defined by the current DOD Appropriation Act restrictions, are permitted to submit offers.

(4) Acquisitions of hand or measuring tools pursuant to the DOD Appropriation Act restrictions without full and open competition (i.e., all otherwise responsible sources are not permitted to submit offers) shall be made under the authorities in FAR Subpart 6.2 or 6.3 and comply with the respective requirements of these FAR subparts for determinations and findings or approved justifications.

(b) *Solicitation provision.* The contracting officer shall insert the provision at § 552.225–71, Procurement Restriction—Hand or Measuring Tools, in solicitations for the acquisition of hand or measuring tools for the Department of Defense.

c. Section 552.225–71 is retitled and amended as follows to incorporate the procurement restrictions in the FY 1986 DOD Appropriation Act:

552.225–71 Procurement Restriction—Hand or Measuring Tools.

As prescribed in § 525.105–71(b), insert the following provision in solicitations and contracts for the acquisition of hand or measuring tools for the Department of Defense.

Procurement Restriction—Hand or Measuring Tools (Apr 1985)

(a) The current Department of Defense (DOD) Appropriation Act prohibits DOD from directly or indirectly acquiring hand or measuring tools classified under Federal Supply Classification (FSC) Group 51, Hand

Tools, or FSC Group 52, Measuring Tools, that are not domestic end products.

"Domestic end product," as used in this provision, means—

(1) Any hand or measuring tool, except for any electric or air-motor driven hand tool, wholly produced or manufactured, including all components, in the United States or its possessions; or,

(2) Any electric or air-motor driven hand tool if the cost of its components produced or manufactured in the United States exceeds 75 percent of the cost of all its components.

"Components," as used in this provision, means those articles, materials, and supplies incorporated directly into the hand or measuring tools.

(b) Awards under this solicitation will only be made to offerors that will furnish hand or measuring tools that are domestic end products.

(c) Tools kits or sets, being procured under this solicitation, will not be considered domestic end products if any individual tool classified in FSC Group 51 or 52 and included in a tool kit or set is not a domestic end product as defined in paragraph (a) of this provision. The restrictions of this clause do not apply to individual hand or measuring tools that are contained in the tool kit or set but are not classified in FSC Group 51 or 52.

(d) Offers of hand or measuring tools that are not domestic end products are unacceptable and will not be considered for award under this solicitation.

(End of Clause)

Richard H. Hopf III,

Acting Associate Administrator for Acquisition Policy.

[FR Doc. 86-10094 Filed 5-5-86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-02, Notice 02]

Federal Motor Vehicle Safety Standards for Brake Fluids and Brake Hoses

AGENCY: National Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: The purpose of this notice is to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 116, *Motor Vehicle Brake Fluids*, and FMVSS No. 106, *Brake Hoses*, to revise the referee materials and test procedures referenced in portions of those standards. FMVSS No. 116 and FMVSS No. 106 currently reference the referee material (RM) identified as RM-1 fluid by the Society of Automotive Engineers (SAE). However, RM-1 fluid is now commercially unavailable, and is less representative of brake fluids used in vehicles on the road today. The SAE in its January 1980 revision of Standard J1703, "Motor Vehicle Brake Fluid," substituted a new referee material, RM-66-03, in place of RM-1 for use in the J1703 compatibility test. This final rule adopts this revision and references RM-66-03 for use in the compatibility test of Standard No. 106, and the compatibility and fluid chemical stability tests of Standard No. 116 This notice also references a new referee material, TEGME, in the humidification procedure of Standard No. 116, adjusts the water content level and test temperature referenced in the test procedures, and amends the number of sets of stroking test materials in the stroking test procedures. This notice also makes procedural modifications to Standard No. 116's humidification procedure adopted from the SAE, and corrects the description of test procedures used to evaluate brake fluid stroking properties.

EFFECTIVE DATES: Due to the commercial unavailability of RM-1 fluid, this rule is effective May 6, 1986. However, because the agency is concerned that manufacturers who might still be using RM-1 fluid to test their products should be able to use their existing supplies, use of RM-1 fluid may continue until November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Bloom, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2153).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard (FMVSS) No. 116, *Motor Vehicle Brake Fluids*, and FMVSS No. 106 *Brake Hoses*, specify performance requirements for motor vehicle brake fluids and brake hoses. Included in the performance requirements of Standard No. 106, is a brake fluid compatibility test, and included in Standard No. 116 are compatibility, chemical stability, and humidification tests. Referee materials are used to test specimens of brake hose and brake fluid for compliance with the standards' requirements. These materials provide a basis of comparison between the results of the tests and the specifications of the standards. The procedures for the compatibility, chemical stability, and humidification tests currently reference the referee material brake fluid specified by the Society of Automotive Engineers (SAE) in the April 1968 version of SAE Standard J1703b. Standard J1703b, in turn, references a referee material (RM) identified as RM-1. (Standard No. 116's description of SAE Standard J1703b, "Motor Vehicle Brake Fluid," April 1968, is incorrect in that the correct reference should be to J1703b, July 1970. In 1970, the agency proposed to reference test procedures of J1703a, April 1968, in Standard No. 116. Subsequently, NHTSA changed reference from J1703a to J1703b. The effort to make this change inadvertently resulted in showing April 1968, the date of J1703a, as the date of J1703b. This notice corrects the error by referencing J1703b, July 1970.)

This rule amends FMVSS Nos. 116 and 106 to revise the referee materials and test procedures referenced in portions of those standards. The SAE, in its January 1980 and November 1983 revisions of Standard J1703, "Motor Vehicle Brake Fluid," substituted a new referee material, RM-66-03, in place of RM-1 for use in the J1703 compatibility test. This notice adopts this revision and references RM-66-03 for use in the compatibility test of Standard No. 106, and the compatibility and fluid chemical stability tests of Standard No. 116. This notice also references a new referee material, TEGME, in the humidification procedures of Standard No. 116, adjusts the water content level and test temperature referenced in the test procedures, and amends the number of sets of stroking test materials in the stroking test of Standard No. 116. This notice also adopts SAE revisions to FMVSS No. 116's humidification test which had been inadvertently omitted from the amendatory language of the proposed rule, and corrects the description of test procedures used to evaluate brake fluid stroking properties.

Testing Brake Hose/Fluid Characteristics

Brake fluid compatibility is an important factor in establishing brake hose life and strength characteristics. The compatibility test of FMVSS No. 106 measures hydraulic brake hose compatibility with brake fluid. The brake hose test specimen is filled with the SAE Compatibility Fluid for a required number of hours at specified temperatures, and is then subjected to constriction and burst strength tests. Currently, RM-1 fluid is referenced in the test procedures for the standard's brake fluid compatibility test.

Under the compatibility requirements of FMVSS No. 116, the compatibility of a brake fluid with a RM fluid is determined. The compatibility fluid that is used in these tests as a referee material should be representative of the fluids found in a braking system in service. The tests measure the compatibility of fluids of different

chemical bases by checking whether there are undesirable chemical interactions resulting from the mixture of fluids. Paragraph S6.10 sets out the procedures for evaluating the compatibility of a brake fluid with other liquids used in a hydraulic brake system (i.e., other brake fluids). This section currently references RM–1 fluid as the referee material used in that test procedure.

The humidification tests of FMVSS No. 116 measure the amount of water absorbed by a brake fluid as compared to a reference fluid. The presence of water in a brake system degrades braking performance and safety by lowering the boiling point of brake fluid, increasing the possibility of vapor lock and the corroding of system components, and the deposition of sediment in wheel cylinders that could cause a system malfunction.

Standard No. 116 establishes minimum wet equilibrium reflux boiling points (ERBP's) for different grades of brake fluid, and the test procedures of S6.2 determine the water content and wet ERBP of brake fluid specimens. The current test procedure specifies that sample fluids of RM–1 and the test specimen are to be humidified simultaneously under controlled conditions. The SAE RM–1 fluid is used as the reference fluid that establishes the "endpoint" for humidification. When the water content of the RM–1 fluid is measured to be 3.50±0.05 percent by weight, the test fluid sample is removed from the humidification apparatus. After humidification, the water content and ERBP of the sample are determined.

Section 7.2 of FMVSS No. 116 also refers to RM–1 fluid as a reference for measuring the water content of brake fluids.

RM–66–03 Fluid

A notice of proposed rulemaking (NPRM) on this rulemaking action was published on March 7, 1985 (50 FR 9294). The NPRM explained that FMVSS Nos. 106 and 116 currently reference SAE RM–1 Compatibility Fluid in their test procedures. In that notice, the agency announced its tentative finding that the inclusion of RM–1 fluid is no longer desirable for the following reasons.

The agency stated its belief that reference to RM–1 fluid should be changed because manufacture of the fluid has ceased. A new fluid, identified as RM–66–03 Compatibility Fluid, has replaced the RM–1 fluid in test procedures described in the January 1980 and November 1983 revisions of SAE Standard J1703. This new fluid is described by the SAE as a blend of four proprietary polyglycol brake fluids of fixed composition, in equal parts by volume. The four fluids selected comprise three factory-fill and one after market fluid as follows: DOW HD50–4, DOW 455, Delco Supreme II, and Olin HDS–79.

While RM–1 fluid is not readily available, RM–66–03 fluid is available from the SAE in the blend and formulation developed by the SAE for J1703. The individual manufacturers of the four proprietary fluids have indicatd to the SAE Brake Fluids Subcommittee and Reference Materials Subcommittee that the proprietary formulation might be changed in the commercial market, but that the formulations developed for the RM–66–03 fluid would be guaranteed to be available for a minimum five-year period commencing May 1983, i.e., at least until May 1988.

The updated reference to RM–66–03 fluid by the SAE is a result of the termination of the manufacturing of the RM–1 fluid. Several of the ingredients contained in the RM–1 fluid are not available to fluid manufacturers since the materials are no longer used in today's fluids, or have become prohibitively costly to obtain. As a result, manufacturers are unwilling to produce more RM–1 fluid.

In addition, RM–1 fluid is not representative of fluids in service today. The agency stated its belief that revising the referee material used in the compatibility test is warranted since the purposes of that test would be better served by a referee material more representative of today's fluids. Inclusion of RM–1 fluid in FMVSS Nos. 116 and 106 is also undesirable because RM–1 fluid contains toxic materials which require elaborate protective procedures and special handling and manufacturing processes.

In consideration of the foregoing, NHTSA proposed an amendment to FMVSS Nos. 106 and 116 to substitute new referee materials for the compatibility and humidification tests. For Standard No. 106's compatibility requirement and test procedures (S5.3.9 and S6.7), and Standard No. 116's compatibility (6.10), fluid chemical stability (6.5), and water content (7.2) tests, the new referee material was proposed to be RM–66–03 fluid as described in the January 1980 version of SAE Standard J1703.

Seven commenters responded to the NPRM. Each commenter agreed with the proposal to reference RM–66–03 fluid in FMVSS Nos. 106 and 116. General Motors Corporation (GM) and Chrysler Corporation agreed with the agency's tentative conclusion that the new referee material would be more available and compatible with current brake fluids than RM–1 fluid. Other commenters believed that the change would be practical and reasonable.

NHTSA has considered the comments to the NPRM and has decided to amend FMVSS Nos. 106 and 116 to reference RM–66–03 compatibility fluid. One slight change has been made to the NPRM's proposal. The NPRM proposed to reference the RM–66–03 fluid as described in the January 1980 revision of SAE Standard J1703. This rule will reference RM–66–03 fluid as described in the November 1983 revision of J1703. The two SAE revisions of J1703 are identical in their descriptions of RM–66–03; the agency is making this change in order to keep FMVSS Nos. 106 and 116 current by referencing the more recent SAE standard.

Use of the RM–66–03 fluid in the test procedures of Standards Nos. 116 and 106 should have a beneficial impact on safety. Since the RM–1 compatibility fluid currently referenced in FMVSS Nos. 106 and 116 is not commercially available, ascertaining whether hoses and fluids comply with certain requirements related to compatibility and boiling points is difficult. Amending the standards to allow the use of RM–66–03 fluid in place of RM–1 provides a readily available compatibility fluid for the compliance tests which is more representative of fluids used in today's vehicles.

TEGME, Brake Fluid Grade

In humidification test procedures under FMVSS No. 116, the referee material fluid is used as a reference to determine when to terminate the humidification procedure. Currently RM–1 fluid is used as this referee material. NHTSA proposed to amend Standard No. 116 to reference a new referee fluid, triethylene glycol monomethyl ether (TEGME), brake fluid grade, as the referee material noted in Standard No. 116's procedures for a brake fluid's wet equilibrium reflux boiling point (S6.2). TEGME has been referenced by the SAE in J1703 Jan 80 and J1703 Nov 83 as the referee material used in the humidification test procedure.

In addition to referencing the TEGME material, the agency also proposed to amend S6.2 of FMVSS No. 116 to adjust the final water content of the referee material fluid to 3.70% water (instead of the current requirement of 3.5%), change the test temperature to 50 °C. (from 23 °C.), and add a cooling period for the sealed jar sample. As explained in the NPRM, those changes (use of TEGME fluid, change in water pickup and test temperature, and the cool-down to room

temperature) were proposed as part of the overall changes adopted from SAE J1703 procedures.

All but one of the commenters to the notice supported the changes to the TEGME fluid. Commenters believed that the changes would simplify the test procedures and make them more cost effective.

In its comment on the NPRM, Union Carbide questioned whether there are adequate data to show that the new humidification test procedure will produce comparable test results when applied to DOT–4 and DOT–5 brake fluids. That commenter suggested that NHTSA reconsider adopting the SAE J1703 Jan 80 humidification test method or adopt it as an alternative to the current method that uses RM–1 fluid until complete comparative testing could be performed.

The agency does not agree with Union Carbide that the humidification test method of SAE J1703 Jan 80 should not be adopted as the new Standard No. 116 test procedure. The TEGME fluid is capable of absorbing a measurable amount of water in a given time and is only used as a reference to determine when to terminate the humidification process. Under the humidification test procedure, samples of brake fluid and TEGME are humidified simultaneously until a measured quantity of fluid is picked up in the TEGME. When the water content of the TEGME fluid reaches 3.7 percent, the brake fluid test specimens are removed from the test apparatus and their water contents and ERBP's are measured. TEGME, the referee material used in the humidification procedure, thus serves only to establish the end point of a test procedure.

The 3.7 percent TEGME water pick up (at 50 °C) corresponds to the 3.5 percent water pickup (at 23 °C) of the referee fluid (RM–1) used previously to determine the end point of the humidification procedure. The agency has determined that DOT–3 fluid picks up the same amount of water when humidified under procedures which use TEGME as the referee material, as it does when humidified under procedures using RM–1. Therefore, the agency believes that the water pickup of test fluids, including DOT–4 and DOT–5 fluids, would not be affected by the change to TEGME. Accordingly, NHTSA is amending FMVSS No. 116 to reference the TEGME referee material.

The NPRM proposed to reference the TEGME fluid as described in the January 1980 revision of SAE Standard J1703. This rule will instead reference TEGME as described in the November 1983 revision of J1703. The two SAE revisions of J1703 are identical in their descriptions of TEGME; the agency is making this change in order to keep FMVSS No. 116 current by referencing the more recent SAE standard.

Humidification Test Procedures

All commenters supported the additional changes to the humidification procedure of S6.2 adopted from SAE Standard J1703. This rule adopts the proposed changes to S6.2 and adjusts the final water content of the referee material fluid to 3.70%, changes the test temperature to 50 °C, and adds a cooling period for the sealed jar sample.

Other changes to the humidification procedure were suggested in the comments to the NPRM. GM and Union Carbide Corporation pointed out that while NHTSA proposed to adopt the humidification test procedures from SAE J1703, the procedural modifications proposed in the amendatory language differed slightly from the SAE standard. GM suggested changing FMVSS No. 116's humidification procedure to agree with that of SAE J1703 Jan 80 in order to facilitate testing. The following changes were suggested: S6.2.1 should be revised to require 150 ml. samples of brake fluid and TEGME instead of the proposed 100 ml. samples; S6.2.3 should be revised to eliminate ammonium sulfate from the list of reagents and materials and to specify distilled water and TEGME; S6.2.4 should be revised to load the dessicators with 450 ml. of distilled water instead of the ammonium sulfate/distilled water slurry; and S6.2.5 should be revised to use 150 ml. samples of the brake fluid and TEGME instead of the proposed 100 ml. samples.

As evidenced by the GM and Union Carbide comments, it was clear that the agency intended to facilitate testing by adopting the overall changes to the humidification test from SAE J1703. Therefore, NHTSA agrees that those additional changes should be incorporated into this final rule. This rule amends S6.2.1, S6.2.3, S6.2.4, and S6.2.5 to correct the minor omissions noted above. Further, S6.2.2 is revised to clarify that distilled water would be substituted for the salt slurry in Figure 3 of FMVSS No. 116, *Humidification Apparatus,* when TEGME is used as the referee material.

Stroking Test

The stroking test in FMVSS No. 116 checks the lubricity effect of a brake fluid on rubber components. The NPRM explained that the SAE had determined, in its revision of J1703 Jan 80, that three sets of test material are sufficient to analyze the adequacy of test results. The notice announced that, based on NHTSA's tentative agreement with that SAE conclusion and its belief that compliance testing costs would be reduced by that change without an adverse effect on safety, the agency was proposing to amend the requirements of S5.1.13 and S6.13 to require testing of only three sets of test material (consisting of wheel cylinders, drums, shoe assemblies, etc.) instead of four sets, and eight new brake cups instead of 10. Since NHTSA proposed to reduce the number of cups tested, a reduction in the number of cups checked for unsatisfactory operating condition was also proposed.

All comments supported the agency's proposal to revise the stroking test procedures. The commenters believed that the changes proposed in the NPRM would simplify the test procedures and make them more cost effective. NHTSA agrees, and has revised S5.1.13 and S6.13 as proposed in the NPRM.

In addition, this rule makes several changes to the stroking test procedures in FMVSS No. 116 which directly relate to the agency's adoption of the SAE stroking test revision. Currently, S6.13.2 describes the apparatus and equipment used for the stroking test and refers to figures in SAE Standard J1703b which depict stroking apparatuses. Figure 1 of J1703b depicts four sets of drum and shoe assemblies. Since NHTSA has reduced the number of sets of test materials to three, the agency believes that the description of the test apparatuses and arrangement of test materials should also be revised to reflect this change. The description of the apparatuses used in the stroking test is changed only to clarify that three sets of materials are used, instead of four.

The following related revisions to the stroking test procedure are necessary to facilitate the change to three sets of materials. Paragraph S6.13.4(c) describes the preparation and assembly of test apparatuses. When a shoe and drum type apparatus is used, S6.13.4(c) specifies a 23 mm. stroke length, based on output piston movement of four sets of wheel cylinders. Stroke length refers to the distance traveled by the master cylinder piston to displace a certain volume of fluid in the test system which, in turn, forces the wheel cylinder pistons to travel a specified distance. Since the stroking test is revised to require only three sets of materials, the stroke length of the master cylinder would no longer be 23 mm.

This rule deletes reference in S6.13.4(c) to exact piston displacement measurements and a 23 mm. stroke length. The agency has determined that it is not necessary to specify master

cylinder and wheel cylinder piston travel since those values are determined by the characteristics of the system which are specified in the standard (i.e., dimensions of the master cylinder and wheel cylinders, and pressure). The stroking test apparatus is a closed hydraulic system; pressure of 1,000 pounds per square inch (p.s.i.) is generated at the outlet port of the master cylinder, and all pistons have the same diameters of 1⅛ inch. Given the above, displacement of the wheel cylinders is directly proportional to the displacement of the master cylinder, and in the given test apparatus the stroke length of the master cylinder is dependent on system pressure. Stroke length would therefore be adjusted by the characteristics of the system from the former value of 23 mm. to a value proportioned for three wheel cylinders.

Since the agency is eliminating exact wheel cylinder piston travel measurements and is specifying that only three sets of test materials are required in the stroking test, this rule also deletes reference in S6.13.4(c) to Figure 4 of SAE Standard J1703b. That figure illustrated the approximate pressure buildup versus the master cylinder piston movement, and was based on the use of four sets of materials. S6.13.4(c) would continue, however, to specify that the pressure buildup is relatively low during the first part of the stroke, in order to avoid damage of the master cylinder's primary cup by ensuring that the primary cup passes the compensating port at a relatively low pressure.

Typographical Errors

This notice corrects the typographical errors in S5.1.9(a), S5.1.9(b) and S5.1.12 of Standard No. 116, as proposed in the NPRM.

Effective Date

This rule is effective upon publication in the **Federal Register**. As explained in the NPRM, the agency finds good cause for this expedited effective date because the RM-1 fluid used in the testing procedures of FMVSS Nos. 116 and 106 is commercially unavailable. Use of the RM-66-03 fluid will facilitate compliance testing by utilizing a referee material that is currently available and more representative of fluids in service. However, because the agency is concerned that manufacturers who might still be using RM-1 fluid to test their products should be able to use their existing supplies, use of RM-1 fluid may continue until November 3, 1986, i.e., 180 days after publication of this rule.

In accordance with the above provision permitting the use of RM-1 during the interim period, this rule describes separate test procedures appropriate for use with RM-1 and for the new referee materials (i.e., RM-66-03 and TEGME). Test procedures for RM-1 usage are specified for those manufacturers who choose to use that fluid during the 180-day period.

Environmental Effects

NHTSA has analyzed this final rule under the National Environmental Policy Act and has determined that it would not have a significant effect on the quality of the human environment.

Economic Effects

NHTSA has concluded that this final rule does not qualify as a "major rule" within the meaning of Executive Order 12291, and that it is not "significant" within the meaning of the Department of Transportation's regulatory procedures. Preparation of a regulatory impact analysis is not necessary for this rulemaking. The agency has determined further that the effects of this rulemaking are minor and that a full regulatory evaluation is not warranted. The rule references referee materials in Standards Nos. 116 and 106 that are readily available to manufacturers of brake fluids and brake hoses.

The agency believes that manufacturers will benefit by the change to RM-66-03 fluid and TEGME fluid in FMVSS No. 116 and RM-66-03 fluid in FMVSS No. 106. The fluids are readily available whereas RM-1 is not, and are more representative of fluids in service today. The agency knows of no problems resulting from tests conducted with the RM-66-03 and TEGME fluids.

Some cost savings would be realized with this amendment. The utilization of RM-66-03 fluid will reduce the costs of fluids used in compliance testing without sacrificing adequate test results. For example, as cited in the NPRM, when last available, RM-1 fluid cost approximately $27.00 per quart. The cost of RM-66-03 fluid is approximately $8.00 per quart.

Cost savings will be realized by the use of the TEGME fluid in the humidification tests of FMVSS No. 116. The TEGME fluid costs approximately $3.30 per quart. Further, using the TEGME fluid in compliance testing would conserve the more expensive supply of RM-66-03 brake fluid material.

The change in the stroking test procedures will also result in some cost savings. The costs related to the quantities of materials tested will be reduced about 25 percent.

Any changes to Standard Nos. 106 and 116 referencing the RM-66-03 and TEGME fluids and reducing the number of test materials used in the stroking test will not significantly affect manufacturers of brake hoses and referee materials. These manufacturers may benefit from some cost savings resulting from the changes to the standards, but will not otherwise be significantly affected by this amendment.

NHTSA has considered the impacts of this final rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of brake hoses and referee materials referenced in FMVSS Nos. 116 and 106 are generally not small businesses within the meaning of the Regulatory Flexibility Act. However, even if such manufacturers were considered small businesses within the Regulatory Flexibility Act, the potential costs of this rulemaking are minimal and are outweighed by the potential benefits.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

§ 571.106—[Amended]

In consideration of the foregoing, 49 CFR 571.106, *Brake Hoses*, is amended as follows:

1. The authority citation for Part 571 will continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. S5.3.9 is revised to read as follows:

S5.3.9 *Brake fluid compatibility, constriction, and burst strength.* Except for brake hose assemblies designed for use with mineral or petroleum-based brake fluids, a hydraulic brake hose assembly shall meet the constriction requirement of S5.3.1 after having been subjected to a temperature of 200 °F for 70 hours while filled with SAE RM-66-03 Compatibility Fluid, as described in Appendix A of SAE Standard J1703 Nov 83, "Motor Vehicle Brake Fluid," November 1983 (S6.7). It shall then withstand water pressure of 4,000 psi for 2 minutes and thereafter shall not rupture at less than 5,000 psi (S6.2). (SAE RM-1 Compatibility Fluid, as described in Appendix A of SAE Standard J1703b, "Motor Vehicle Brake Fluid," July 1970, may be used in place

of SAE RM–66–03 until November 3, 1986.

3. Paragraph S6.7.1(a) is revised to read as follows:

S6.7.1 *Preparation.*

(a) Attach a hose assembly below a 1-pint reservoir filled with 100 ml of SAE RM-66-03 Compatibility Fluid as shown in Figure 2. (SAE RM–1 Compatibility Fluid, as described in Appendix A of SAE Standard J1703b, "Motor Vehicle Brake Fluid," July 1970, may be used in place of SAE RM–66–03 until November 3, 1986.

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§ 571.116—[Amended]

In consideration of the foregoing, 49 CFR 571.116. *Motor Vehicle Brake Fluids,* is amended as follows:

1. S5.1.9 (a) and (b) introductory texts are revised to read as follows:

S5.1.9 *Water Tolerance.*

(a) *At low temperature.* When brake fluid is tested according to S6.9.3(a)—

* * * * *

(b) *At 60 °C (140 °F).* When brake fluid is tested according to S6.9.3(b)—

* * * * *

2. S5.1.12 introductory text is revised to read as follows:

S5.1.12 *Effects on cups.* When brake cups are subjected to brake fluid in accordance with S6.12—

* * * * *

3. S5.1.13 (c), (d), (e), and (f) are revised to read as follows:

S5.1.13 *Stroking properties.* When brake fluid is tested according to S6.13—

* * * * *

(c) The average decrease in hardness of seven of the eight cups tested (six wheel cylinder and one master cylinder primary) shall not exceed 15 IRHD. Not more than one of the seven cups shall have a decrease in hardness greater than 17 IRHD;

(d) None of the eight cups shall be in an unsatisfactory operating condition as evidenced by stickiness, scuffing, blisters, cracking, chipping, or other change in shape from its original appearance;

(e) None of the eight cups shall show an increase in base diameter greater than 0.90 mm (0.035 inch);

(f) The average lip diameter set of the eight cups shall not be greater than 65 percent.

* * * * *

4. S6 is revised to read as follows:

S6. *Test procedures.* Until November 3, 1986, SAE RM–1 Compatibility Fluid, as described in Appendix A of SAE Standard J1703b, "Motor Vehicle Brake Fluid," July 1970, may be used in place of TEGME and SAE RM–66–03 in the humidification (S6.2), chemical stability (S6.5.4), and compatibility (S6.10) test procedures, and as a referee material in S7.2.

* * * * *

5. S6.2.1 is revised to read as follows:

S6.2.1 *Summary of the procedure.*

(a) *With TEGME:* Except as provided in paragraph S6.2.1(b), a 150 ml. sample of the brake fluid is humidified under controlled conditions; 150 ml. of SAE triethylene glycol monomethyl ether, brake fluid grade, referee material (TEGME) as described in Appendix E of SAE Standard J1703Nov83, "Motor Vehicle Brake Fluid," November 1983, is used to establish the end point for humidification. After humidification the water content and ERBP of the brake fluid are determined.

(b) *With RM–1:* Until November 3, 1986, SAE RM–1 Compatibility Fluid, as described in Appendix A of SAE Standard J1703b, "Motor Vehicle Brake Fluid," July 1970, may be used with the following procedures. See S6. A 100-ml sample of the brake fluid is humidified under controlled conditions; 100 ml. of SAE RM–1 Compatibility Fluid is used to establish the end point for humidification. After humidification the water content and ERBP of the brake fluid are determined.

6. S6.2.2. introductory text is revised to read as follows:

S6.2.2 *Apparatus for humidification.* (See Figure 3. November 3, 1986, a manufacturer may use either TEGME or RM–1 Compatibility Fluid. If TEGME is used, substitute 450 ml. of distilled water in place of the salt slurry and disregard the "45±7 mm." dimension.)

Test apparatus shall consist of—

* * * * *

7. S6.2.3 is revised to read as follows:

S6.2.3 *Reagents and Materials.*

(a) Distilled water, see S7.1.

(b) Except as provided in S6.2.3(c), SAE TEGME referee material.

(c) Until November 3, 1986, a manufacturer may use either TEGME or SAE RM–1 Compatibility Fluid. See S6.

(d) If RM–1 is used, also use ammonium sulfate $(NH_4)_2SO_4$, Reagent or A.C.S. grade.

8. S6.2.4 is revised to read as follows:

S6.2.4 *Preparation of Apparatus.*

(a) *With TEGME:* Except as provided in S6.2.4(b), lubricate the ground-glass joint of the desiccator. Pour 450±10 ml of distilled water into each desiccator and insert perforated porcelain desiccator plates. Place the desiccators in an oven with temperature controlled at 50±1 °C (122±1.8 °F) throughout the humidification procedure.

(b) *With RM–1:* Until November 3, 1986, a manufacturer may use either TEGME or SAE RM–1 Compatibility Fluid. See S6. Lubricate the ground-glass joint of the desiccator. Load each desiccator with 450±25 grams of the ammonium sulfate and add 125±10 ml. of distilled water. The surface of the salt slurry shall lie within 45±7 mm. of the top surface of the desiccator plate. Place the desiccators in an area with temperature controlled at 23±2 °C. (73.4±3.6 °F.) throughout the humidification procedure. Condition the loaded desiccator with the covers on the stoppers in place at least 12 hours before use. Use a fresh charge of salt slurry for each test.

9. S6.2.5 is revised to read as follows:

S6.2.5 *Procedure.*

(a) *With TEGME:* Except as provided by S6.2.5(b), pour 150±5 ml of the brake fluid into an open corrosion test jar. Place the jar into a desiccator. Prepare in the same manner a duplicate test fluid sample and two duplicate specimens of the SAE TEGME referee material (150±4 ml of TEGME in each jar). The water content of the SAE TEGME fluid is adjusted to 0.50±0.05 percent by weight at the start of the test in accordance with S7.2. Place these samples in the desiccators in the 50 °C (122°F) controlled oven and replace desiccator covers. At intervals, during oven humidification, remove the rubber stopper in the top of each desiccator containing SAE TEGME fluid. Using a long needled hypodermic syringe, take a sample of not more than 2 ml from each jar and determine its water content. Remove no more than 10 ml of fluid from each SAE TEGME sample during the humidification procedure. When the water content of the SAE fluid reaches 3.70±0.05 percent by weight (average of the duplicates), remove the two test fluid specimens from their desiccators and promptly cap each jar tightly. Allow the sealed jars to cool for 60–90 minutes at 23±5 °C (73.4±9 °F). Measure the water contents of the test fluid specimens in accordance with S7.2 and determine their ERBP's in accordance with S6.1. If the two ERBP's agree within 4 °C (8 °F), average them to determine the wet ERBP; otherwise repeat and average the four individual ERBP's as the wet ERBP of the brake fluid.

(b) *With RM–1:* Until November 3, 1986, a manufacturer may use either TEGME or SAE RM–1 Compatibility Fluid. See S6. Pour 100±1 ml of the brake fluid into a corrosion test jar. Promptly place the jar into a desiccator. Prepare duplicate test sample, and two duplicate specimens of the SAE RM–1 compatibility fluid. Adjust water content of the SAE RM–1 fluid to 0.50±0.05 percent by weight at the start of the test in accordance with S7.2. At intervals

remove the rubber stopper in the top of each desiccator containing SAE RM–1 fluid. Using a long needled hypodermic syringe, take a sample of not more than 2 ml from each jar and determine its water content. Remove no more than 10 ml of fluid from each SAE RM–1 sample during the humidification procedure. When the water content of the RM–1 fluid reaches 3.50±0.05 percent by weight (average of the duplicates), remove the two test fluid specimens from their desiccators and promptly cap each jar tightly. Measure the water contents of the test fluid specimens in accordance with S7.2 and determine their ERBP's in accordance with S6.1 through S6.1.5. If the two ERBP's agree within 4 °C. (8 °F.), average them to determine the wet ERBP; otherwise repeat and average the four individual ERBP's as the wet ERBP of the brake fluid.)

10. S6.5.4.1 is revised to read as follows:

S6.5.4.1 *Materials.*

(a) Except as provided in S6.5.4.1(b), SAE RM–66–03 Compatibility Fluid, as described in Appendix A of SAE Standard J1703Nov83, "Motor Vehicle Brake Fluid," November 1983.

(b) Until November 3, 1986, a manufacturer may use either SAE RM–66–03, or SAE RM–1 Compatibility Fluid as described in Appendix A of SAE Standard J1703b, "Motor Vehicle Brake Fluid," July 1970. See S6.

11. Paragraph S6.5.4.2 is revised to read as follows:

S6.5.4.2 *Procedure.*

(a) *With RM–66–03:* Except as provided in S6.5.4.2(b), mix 30±1 ml of the brake fluid with 30±1 ml of SAE RM–66–03 Compatibility Fluid in a boiling point flash (S6.1.2(a)). Determine the initial ERBP of the mixture by applying heat to the flask so that the fluid is refluxing in 10±2 minutes at a rate in excess of 1 drop per second, but not more than 5 drops per second. Note the maximum fluid temperature observed during the first minute after the fluid begins refluxing at a rate in excess of 1 drop per second. Over the next 15±1 minutes, adjust and maintain the reflux rate at 1 to 2 drops per second. Maintain this rate for an additional 2 minutes, recording the average value of four temperature readings taken at 30-second intervals as the final ERBP.

(b) *With RM–1:* Until November 3, 1986, a manufacturer may use either RM–66–03, or SAE RM–1 Compatibility Fluid as described in Appendix A of SAE Standard J1703b, "Motor Vehicle Brake Fluid," July 1970. See S6.

(c) Thermometer and barometic corrections are not required.

12. S6.10.1 is revised to read as follows:

S6.10.1 *Summary of the procedure.*

(a) *With RM–66–03:* Except as provided in S6.10.1(b), brake fluid is mixed with an equal volume of SAE RM–66–03 Compatibility Fluid, then tested in the same way as for water tolerance (S6.9) except that the bubble flow time is not measured. This test is an indication of the compatibility of the test fluid with other motor vehicle brake fluids at both high and low temperatures.

(b) *With RM–1:* Until November 3, 1986, a manufacturer may use either RM–66–03, or SAE RM–1 Compatibility Fluid as described in Appendix A of SAE Standard J1703b, "Motor Vehicle Brake Fluid," July 1970. See S6. This test is an indication of the compatibility of the test fluid with other motor vehicle brake fluids at both high and low temperatures.

13. Paragraph S6.10.2(e) is revised and (f) is added to read as follows:

S6.10.2 *Apparatus and materials.*

* * * * *

(e) Except as provided in S6.10(f), *SAE RM–66–03 Compatibility Fluid.* As described in Appendix A of SAE Standard J1703Nov83, "Motor Vehicle Brake Fluid," November 1983.

(f) Until November 3, 1986, a manufacturer may use either RM–66–03, or SAE RM–1 Compatibility Fluid as described in Appendix A of SAE Standard J1703b, "Motor Vehicle Brake Fluid," July 1970. See S6.

14. Paragraph S6.10.3(a) is revised to read as follows:

S6.10.3 *Procedure.*

(a) *At low temperature.*

(1) *With RM–66–03:* Except as provided in S6.10.3(a)(2), mix 50±0.5 ml. of brake fluid with 50±0.5 ml. of SAE RM–66–03 Compatibility Fluid. Pour this mixture into a centrifuge tube and stopper with a clean dry cork. Place tube in the cold chamber maintained at minus 40°±2 °C (minus 40°±3.6 °F). After 24±2 hours, remove tube, quickly wipe with a clean lint-free cloth saturated with ethanol (isopropanol when testing DOT 5 fluids) or acetone. Examine the test specimen for evidence of sludging, sedimentation, or crystallization. DOT 3 and DOT 4 test fluids shall also be examined for stratification.

(2) *With RM–1:* Until November 3, 1986, a manufacturer may use either RM–66–03, or SAE RM–1 Compatibility Fluid as described in Appendix A of SAE Standard J1703b, "Motor Vehicle Brake Fluid," July 1970. See S6.

* * * * *

15. S6.13.1 is revised to read as follows:

S6.13.1 *Summary of the procedure.* Brake fluid is stroked under controlled conditions at an elevated temperature in a simulated motor vehicle hydraulic braking system consisting of three slave wheel cylinders and an actuating master cylinder connected by steel tubing. Referee standard parts are used. All parts are carefully cleaned, examined, and certain measurements made immediately prior to assembly for test. During the test, temperature, rate of pressure rise, maximum pressure, and rate of stroking are specified and controlled. The system is examined periodically during stroking to assure that excessive leakage of fluid is not occurring. Afterwards, the system is torn down. Metal parts and SBR cups are examined and remeasured. The brake fluid and any resultant sludge and debris are collected, examined, and tested.

16. S6.13.2 introductory text, (a), (c), and (f) are revised to read as follows:

S6.13.2 *Apparatus and equipment.*

Either the drum and shoe type of stroking apparatus (see Figure 1 of SAE Standard J1703b) except using only three sets of drum and shoe assemblies, or the stroking fixture type apparatus as shown in Figure 2 of SAE J1703Nov83, with the components arranged as shown in Figure 1 of SAE J1703Nov83. The following components are required.

(a) *Brake assemblies.* With the drum and shoe apparatus: three drum and shoe assembly units (SAE RM–29a) consisting of three forward brake shoes and three reverse brake shoes with linings and three front wheel brake drum assemblies with assembly component parts. With stroking fixture type apparatus: three fixture units including appropriate adapter mounting plates to hold brake wheel cylinder assemblies.

* * * * *

(c) *Heated air bath cabinet.* An insulated cabinet or oven having sufficient capacity to house the three mounted brake assemblies or stroking fixture assemblies, master cylinder, and necessary connections. A thermostatically controlled heating system is required to maintain a temperature of 70°±5 °C (158°±9 °F) or 120°±5 °C (248°±9 °F). Heaters shall be shielded to prevent direct radiation to wheel or master cylinder.

* * * * *

(f) *Wheel cylinder (WC) assemblies (SAE RM–14a).* Three unused cast iron housing straight bore hydraulic brake WC assemblies having diameters of

approximately 28 mm (1⅛ inch) for each test. Pistons shall be made from unanodized SAE AA 2024 aluminum alloy.

* * * * *

17. Paragraph S6.13.3(a) is revised to read as follows:

S6.13.3 *Materials.*

(a) *Standard SBR brake cups.* Six standard SAE SBR wheel cylinder test cups, one primary MC test cup, and one secondary MC test cup, all as described in S7.6, for each test.

* * * * *

18. Paragraph S6.13.4(c) is revised to read as follows:

S6.13.4 *Preparation of test apparatus.*

* * * * *

(c) *Assembly and adjustment of test apparatus.*

(1) When using a shoe and drum type apparatus, adjust the brake shoe toe clearances to 1.0±0.1 mm. (0.040±0.004 inch). Fill the system with brake fluid, bleeding all wheel cylinders and the pressure gage to remove entrapped air. Operate the actuator manually to apply a pressure greater than the required operating pressure and inspect the system for leaks. Adjust the actuator and/or pressure relief valve to obtain a pressure of 70±3.5 kg./sq. cm. (1,000±50 p.s.i.). A smooth pressure-stroke pattern is required when using a shoe and drum type apparatus. The pressure is relatively low during the first part of the stroke and then builds up smoothly to the maximum stroking pressure at the end of the stroke, to permit the primary cup to pass the compensating hole at a relatively low pressure. Using stroking fixtures, adjust the actuator and/or pressure relief valve to obtain a pressure of 70±3.5 kg./sq. cm. (1,000±50 p.s.i.).

(2) Adjust the stroking rate to 1,000±100 strokes per hour. Record the fluid level in the master cylinder standpipe.

19. S6.13.6(b) and S6.13.6(c) are revised to read as follows:

S6.13.6 *Calculation.*

* * * * *

(b) Calculate the average decrease in hardness of the seven cups tested, as well as the individual values (see S5.1.13(c)).

(c) Calculate the increases in base diameters of the eight cups (see S5.1.13(e)).

* * * * *

20. The first sentence of Paragraph S6.13.6(d) is revised to read as follows:

* * * * *

(d) Calculate the lip diameter interference set for each of the eight cups by the following formula and average the eight values (see S5.1.13(f)).

* * * * *

21. S7.2 is revised to read as follows:

S7.2 *Water content of motor vehicle brake fluids.* (a) Use analytical methods based on ASTM D1123–59, "Standard Method of Test for Water in Concentrated Engine Antifreezes by the Iodine Reagent Method," for determining the water content of brake fluids, or other methods of analysis yielding comparable results. To be acceptable for use, such other method must measure the weight of water added to samples of the SAE RM–66–03 and TEGME Compatibility Fluids within ±15 percent of the water added for additions up to 0.8 percent by weight, and within ±5 percent of the water added for additions greater than 0.8 percent by weight. The SAE RM–66–03 Compatibility Fluid used to prepare the samples must have an original ERBP of not less than 205 °C (401 °F) when tested in accordance with S6.1. The SAE TEGME fluid used to prepare the samples must have an original ERBP of not less than 240 °C (464 °F) when tested in accordance with S6.1.

(b) Until November 3, 1986, a manufacturer may use either RM–66–03 and TEGME or SAE RM–1 Compatibility Fluid. See S6. To be acceptable for use, such other method must measure the weight of water added to samples of the SAE RM–1 Compatibility Fluid within ±15 percent of the water added for additions up to 0.8 percent by weight, and within ±5 percent of the water added for additions greater than 0.8 percent by weight. The SAE RM–1 Compatibility Fluid used to prepare the samples must have an original ERBP of not less than 182 °C. (360 °F.) when tested in accordance with S6.1.

Issued on April 29, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86–10037 Filed 5–5–86; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 51, No. 87
Tuesday May 6, 1986

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing to revise its civil service retirement regulations to formally establish an order of precedence for applying installments paid by individuals to cover past civilian service not currently covered by retirement deductions. These regulations would give the public notice of the order of precedence now applied by OPM.

DATE: Comments must be received on or before July 7, 1986.

ADDRESS: Send comments to Reginald M. Jones, Jr., Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Angel, (202) 632–1265.

SUPPLEMENTARY INFORMATION: The Civil Service Retirement (CSR) law (5 U.S.C. 8334 (c) and (d)) allows employees to make payments for periods of past civilian service not covered by retirement deductions. (Payments to cover military service are also permitted but are not pertinent here). In OPM regulations, the payments are termed "deposits" when they apply to periods when CSR deductions were not originally taken from pay. The basic amount due represents the amount of deductions that would have been taken if the period of service had been subject to CSR deductions. OPM uses the term "redeposits" when the payments apply to periods previously covered by deductions that were later refunded to the employee. The basic amount due is the amount of the refund paid.

The law requires OPM to add an interest charge on both deposits and redeposits. Interest rates are established under subsection (e) of section 8334 of title 5, United States Code. Beginning in 1985, the rate changed from 3 percent to an annually-variable rate reflecting the average yield on new interest-bearing securities purchased by the Civil Service Retirement Fund during the previous fiscal year. The 1985 rate is 13 percent, but that rate applies only to deposits for service performed after September 1982, and to redeposits of amounts paid on refund applications filed after September 1982. The 3 percent rate applies to all other deposits and redeposits, except that a 4 percent rate would still apply for interest computations before 1948.

Accordingly, there are now four kinds of civilian service that must be distinguished in computing interest on deposits and redeposits: (1) 13 percent redeposits; (2) 3 percent (or 4%) redeposits; (3) 13 percent deposits; and (4) 3 percent (or 4%) deposits. An employee may have any combination.

Because installment payments are permitted, OPM uses an order of precedence in deciding how to apply the installments as they are received. The order of precedence currently in use is the order numbered (1) through (4) above. OPM believes that this is the appropriate order of precedence since it automatically applies the payments first to reduce previous refunds of deductions and second to cover any nondeduction service.

Because the total amount paid by an individual depends on, among other things, the combination of types of service involved, the monetary impact of the order of precedence may vary from case to case. Moreover, the law allows individuals a choice of whether or not to pay into the Fund for any period of service. Therefore, the attached proposed regulations would permit a qualified employee to request OPM to use a different order of precedence when applying installment payments to the balance outstanding for more than one category of service.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that, within the scope of the Regulatory Flexibility Act, this regulation will not have a significant economic impact on a substantial number of small entities because it would affect Federal employees only.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 831 as follows:

PART 831—RETIREMENT

1. The authority citation for Subpart A of Part 831 is added to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2).

2. Section 831.105 is amended by adding paragraph (h) to read as follows:

§ 831.105 Computation of interest.

* * * * *

(h) When an individual's civilian service involves several deposit and/or redeposit periods, OPM will normally use the following order of precedence in applying each installment payment against the full amount due: (1) Redeposits of refunds paid on applications received by the individual's employing agency or OPM on or after October 1, 1982; (2) Redeposits of refunds paid on applications received by the individual's employing agency or OPM before October 1, 1982; (3) Deposits for noncontributory civilian service performed on or after October 1, 1982; and (4) Deposits for noncontributory service performed before October 1, 1982.

However, if the individual specifically requests a different order of precedence, the request will be honored.

[FR Doc. 86–10138 Filed 5–5–86; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[Docket No. HRPCIA-1]

Honey Research, Promotion, and Consumer Information Order; Decision and Referendum Order on Proposed Order

AGENCY: Agricultural Market Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision proposes a Honey Research, Promotion, and Consumer Information Order and provides honey producers and importers with the opportunity to vote in a referendum on the proposed order. The proposed order would authorize establishment of projects relating to research, consumer information, advertising, sales promotion, producer information, and market development to assist, improve, or promote the marketing, distribution, and utilization of honey and honey products.

DATE: The representative period for purposes of the referendum herein ordered is January 1, 1984 to December 31, 1984. The referendum shall be conducted between May 19 and May 31, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION:

Prior Documents in This Proceeding

Pre-notice press release issued May 29, 1985; Notice of Hearing—Issued June 25, 1985, and published June 28, 1985 (50 FR 26942). Correction of Docket Number, published July 12, 1985 (50 FR 28404). Recommended Decision—Issued January 23, 1986, and published January 29, 1986 (51 FR 3605).

Preliminary Statement

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is not subject to the requirements of Executive Order 12291.

This notice is issued pursuant to the applicable rules of practice and procedure governing proceedings to formulate and amend an order (7 CFR Part 1200). Any order that may result from this proceeding would be effective pursuant to the provisions of the Honey Research, Promotion, and Consumer Information Act, hereafter referred to as the "Act" (7 U.S.C. 4601-4612).

The proposed order was formulated on the record of a public hearing with sessions in Washington, DC, on July 16, 1985, and Denver, Colorado, on July 30, 1985. Notice of the sessions was published in the June 28, 1985, issue of the **Federal Register** (50 FR 26942). That notice contained a proposed order submitted by the American Beekeeping Federation, Inc. (ABF).

The Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq). As stated in the notice of hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impacts of the proposal on small business. Based on the record evidence, a sizeable majority of the honey producers and handlers could be considered small businesses for the purposes of the RFA. In that regard testimony was presented that the production, harvesting, and preparation of honey for market is relatively similar among all honey producers. No clear relationship could be drawn between the size of producers and corresponding costs. No testimony was presented on handler costs or variations of these costs.

Honey is produced and/or marketed in all fifty States including the District of Columbia and the Commonwealth of Puerto Rico. The top twenty honey producing States produce about 80 percent of the total domestic honey production. The record shows that substantial quantities of honey and honey products are imported into and exported from the United States. The record also indicates that there are numerous honey handlers who receive honey from producers, process it, and market it. At least one of these handlers has nationwide distribution.

Honey production in the United States approximates 200 million pounds annually, although there is some year-to-year fluctuation due to weather conditions. The 1981 value of U.S. production of honey was about $90.1 million. This was based on 4.2 million colonies of bees with an average honey yield per colony of 44 pounds.

The record evidence shows that the honey industry is made up of many small entities, and some larger entities, engaged in the production and marketing of honey. In general, there are three categories of honey producers; the hobbyist, the part-time beekeeper or sideliner, and commercial beekeepers. Because the order exempts persons who produce or import less than 6,000 pounds of honey per year, hobbyist beekeepers and a significant number of sideline beekeepers would not be required to pay assessments under this order. One witness cited a 1975 International Trade Commission study which estimated that there were about 10,000 sideline beekeepers and about 1,600 commercial beekeepers in the United States at that time.

The record indicates that the world market price of honey is now far below the cost of production in the U.S. This, coupled with the strength of the U.S. dollar relative to other currencies, has encouraged large quantities of honey to be imported into the United States. According to the record evidence, importations of honey have increased from 10.6 million pounds in 1973 to 128.6 million pounds in 1984. During this period, honey under government loan with the Commodity Credit Corporation increased from zero during the 1970's to almost 115 million pounds in 1984.

The record indicates that various organizations operate promotional activities. Most States have state beekeeping associations which represent a group of people with a common interest, namely to promote honey and beekeeping in that particular State. Some state associations collect an assessment for promotional purposes. The California Honey Advisory Board, which is funded through an assessment program, has been in operation since 1952. It has conducted several honey promotion campaigns and published a well-known honey cookbook. These efforts tend to be independent of one another and operate on a relatively small scale compared to the proposed national program.

At one time, the American Honey Institute conducted a national promotion effort, which was funded through a voluntary check-off plan. It published recipes and provided information on uses of honey through food service editors. After several years of operation, participation in the program fell to such a low level that the Institute ceased operations. Since then, the only national promotional effort has been by the American Beekeeping Federation (ABF), which devotes about one-third of its annual budget to promotion. Its promotional efforts include the American Honey Queen Program, printing and distribution of honey recipe leaflets, and development and distribution of bulk recipes to school food service personnel.

While the efforts of the ABF and others have been helpful, the record evidence is that much more must be

done to increase domestic consumption. Statistics in the record indicate that the total per capita consumption of all sweeteners, including honey, in the U.S. is 128 pounds annually. Of that amount, slightly more than one pound is honey, which compares with over three pounds per person in other countries. The evidence of record is that the American honey industry needs and would benefit from a program to promote the domestic consumption of honey and honey products through promotion and advertising and market research to increase consumer awareness of honey and increase its consumption.

The evidence also is that funds to finance these activities must be obtained by the honey industry through a structure such as the proposed order to assure industry-wide participation and sufficient income on a regular basis to finance those activities. Various alternatives to this national program have been considered, and, in some cases previously tried, but without success. If adopted by producers, this national program would collect one cent per pound of honey, or less than two percent of the gross revenue generated by producers annually. The recordkeeping and report requirements of the order are minimal.

These requirements have been carefully evaluated against the potential benefits of the program. While the order imposes regulations on affected businesses, the added burden resulting from these requirements should not be significant when compared to the benefits which are expected to accrue to such businesses. All entities would be treated equally under the order. Furthermore, pursuant to the Act, the order provides for the exemption of all honey producers and importers who produce or import less than 6,000 pounds of honey annually. This exemption was included in the Act to reduce the burden on small business.

The record supports the view that additional promotion would benefit the honey industry by enabling it to reach more potential consumers. Also, the industry would benefit from an organization unifying those in the industry desiring to promote honey and honey products. This would be achieved by making the contribution of funds by producers and importers mandatory. However, these contributors will have the right to obtain a refund of their assessments if they choose not to support the program.

It has been determined that the program should be submitted to producers and importers for a referendum vote.

Rulings on Briefs of Interested Parties

At the conclusion of the hearing the Administrative Law Judge fixed August 30, 1985, as the final date for interested parties to file proposed findings, conclusions, and written arguments or briefs based upon the evidence received at the hearing. No briefs were filed.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on January 23, 1986, filed with the Hearing Clerk, U.S. Department of Agriculture, the recommended decision containing the notice of the opportunity to file written exceptions thereto. Exceptions were received from Binford Weaver, Past President, American Beekeeping Federation, Inc.; E. Randall Johnson, President, American Beekeeping Federation, Inc., and President, Honeygold Corporation; Frank A. Robinson, Secretary/Treasurer, American Beekeeping Federation, Inc.; Troy H. Fore, Jr., Editor/Publisher *The Speedy Bee;* Harry Rodenburg, Chairman of the Board, Sioux Honey Association; Larry Gunther, Immediate Past-President, American Beekeeping Federation, Inc.; Joe Graham, Editor, *American Bee Journal;* Melaine A. Odlum, Extension Apiculturalist, Maryland Department of Agriculture; Mel Disselkoen, President, International Mating Nuc, Inc.; Reg Wilbanks, Wilbanks Apiaries, Inc.; Alan King, Executive Committee, American Beekeeping Federation, Inc.; Gary Becker, Becker's Busy Bee, Inc.; Morris Weaver, Howard Weaver and Sons, Inc.; William Waugh, Waugh Apiaries, Inc.; L. John Milham, Director, Sioux Honey Association; Loys O. Milham, Robert B. White, Owner/Manager, Sandwich Island Jams and Honey; Joann Manes Olstrom, Owner, Bees and Bylines; Frank Randall, Randall's Wax Works; Charlie G. Miller, Director, Sioux Honey Assn.; Donald R. Schmidt, Schmidt's Honey Farms; and Carol Miller, Secretary/Treaturer, Wyoming Beekeepers Assn. Comments were also received from 221 others representing honey associations, cooperatives, importers, and individuals, all of whom supported the general findings and conclusions of the recommended decision. In addition, there were three comments received opposing the order in general and three were received discussing the government price support program. Discussions and rulings included in the discussions of the material issues, findings and conclusions, rulings, and general findings of the recommended decision set forth in the January 29, 1986 issue of the **Federal Register** (51 FR 3605) are hereby approved and adopted subject to modifications as hereinafter set forth. On the basis of the exceptions filed by February 28, 1986, this decision grants two exceptions to the recommended decision and denies three exceptions. A minor change in Board voting requirements, a change in the definition of producer, and a number of other minor changes, which are incorporated into the decision, are added for clarity and to correct grammatical and typographical errors.

Findings and Conclusions

The material issues, findings and conclusions, rulings, general findings, and regulatory provisions of the recommended decision published in the January 29, 1986, issue of the **Federal Register** (51 FR 3605) are hereby incorporated herein and made a part thereof subject to the following modifications and corrections:

The findings and conclusions in material issue 3(a) of the recommended decision concerning the definition of producers are amended by adding a new paragraph after the sixth paragraph to read as follows:

"Messrs. Weaver and King filed exceptions stating that the discussion on the definition of producer was misconstrued and that testimony at the hearing was concerned only with the owners and operators of honey bee colonies and beekeeping equipment and about the various types of rental and lease arrangements that might be made among owners and operators. Both commentors suggested that "honey bee colonies and beekeeping equipment," rather than "land" and "farmland" would more accurately express the intent of testimony given at the hearing. Since the proposed order supports assessments on producers and importers and not persons who own land, this exception is granted and the decision is modified accordingly."

The findings and conclusions in material issue 3(b) of the recommended decision concerning quorums are amended by adding a new paragraph after the eighteenth paragraph to read as follows:

"Messrs. Weaver, King, and Fore filed exceptions which pointed out that § 1240.35 (a) of the order and the discussion on that section contained in the recommended decision (FR 3610) were inconsistent. A quorum is defined in the recommended order as a majority of the 13 member Board (seven members), and any action of the Board requires the concurring votes of a majority of those present and voting.

The discussion defined a quorum as nine members and stipulated that at least seven of the nine members voting would be necessary for an action of the Board to be recommended. The record evidence supports a determination that seven members should constitute a quorum, and that a majority of those present and voting must concur before any action of the Board can be recommended. In addition, the proposed order also provides that a majority of a seven member quorum be required for any action of the Board. The discussion is hereby modified to reflect the evidence of record."

The findings and conclusions in material issue 3(d) of the recommended decision concerning the one-cent assessment are amended by adding a new paragraph as the last paragraph to read as follows:

"Ms. Olstrom and Mr. Becker filed exceptions asking that the one-cent assessment be reduced. The Honey Research, Promotion, and Consumer Information Act stipulates that any order issued under it contains a minimum of one cent assessment. Therefore, the exception is denied."

The findings and conclusions in material issue 3(h) of the recommended decision concerning recordkeeping and reports are amended by deleting the third paragraph in its entirety and adding the following in lieu thereof:

"Any reports and records submitted for Board use by the first handler should remain confidential and be disclosed to no person other than the Secretary and persons authorized by the Secretary. Under certain circumstances, the release of information compiled from reports may be helpful to the Board and the industry generally in planning for operations under the order. Section 1240.52(c) of the proposal included in the notice of hearing stated that the names and addresses of those persons receiving refunds should not be considered confidential information."

"It has been and continues to be the policy of USDA not to publish nor to authorize administrative committees and boards responsible for the administration of research and promotion programs, involving voluntary assessment provisions, to make public the names of persons requesting refunds. It is the Department's view that publication of the names of producers and importers seeking refunds would adversely impact upon participation in the honey order program. Although several exceptions were filed objecting to the Department's determination to remove § 1240.52(c) from the proposal, it has been determined that for the reasons stated herein the proposed provision should be deleted."

The findings and conclusions in material issue 3(i) of the recommended decision concerning the use of funds generated by any patents, copyrights, publications, or inventions are amended by adding a new paragraph as the last paragraph to read as follows:

Mr. Disselkoen filed an exception to § 1240.67 stating the patents should be owned by beekeepers and packers under the trust of the Board. If assessments are used to develop patents, it is only proper that any funds generated as a result of patents, copyrights, publications, or inventions, after sufficient royalty is paid to the inventor of the patented invention, be the property of the Board and would be treated as assessments funds. Therefore, the exception is denied.

The following corrections implement the changes outlined above and correct any typographical and grammatical errors contained in the recommended decision:

Page	Column	Paragraph	Line	Correction
3608	1	3	13	"Farmland" to "honey bee colonies or beekeeping equipment."
3608	2	1	3	"Land" to "honey bee colonies or beekeeping equipment."
3608	2	1	3	"Farm" to "operate."
3608	2	1	9	"On land" to "honey bee colonies or beekeeping equipment."
3610	3	4	10	"Nine" to "seven".
3610	3	4	14	"Seven members" to "a majority of those present and voting."
3611	3	1	2	"And" to "any."
3615	3	(1)	2	Comma after "Promotion."
3616	2	4	5	"Prodcues" to "produces."
3619	1	2	1	"Icur" to "incur."
3619	1	2	8	"Opeating" to "operating."
3619	1	2	14	"§ 1240.1" to "§ 1240.41."
3619	1	2	15	"Assessment" to "assessments."

[1] Heading.

Ruling on exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, the exceptions to the recommended decision were carefuly and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are hereby denied for the reasons previously stated in this decision.

General Findings

Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The order, and all of the items and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The said order regulates the marketing of honey and honey products in the "States" in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed order upon which a hearing has been held;

(3) The said order is limited in its application to the only marketing area which is practicable consistent with carrying out the declared purposes of the Act; and

(4) The marketing of honey and honey products in the "States," as defined in said order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce. *It is hereby ordered,* that this entire decision be published in the **Federal Register.**

Referendum Order

It is herby directed that a referendum be conducted for the Honey Order in accordance with the procedure for the conduct of referenda (7 CFR Part 1240.200) to determine whether the issuance of the Honey Order is approved or favored by the producers and importers as defined under the terms of the order, who during the representative period were engaged in the production or importation of honey or honey products within the States as defined in this order. The referendum ballot shall provide only for the approval or disapproval of the order. The representative period is hereby determined to be January 1, 1984 through December 31, 1984. The Agents of the Secretary to conduct the referenda are hereby designated to be Jerry W. Brooks and James B. Wendland, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250. The referendum shall be conducted between May 19 and May 31, 1986.

Signed this day at Washington, DC, May 2, 1986.

Alan T. Tracy,

Acting Assistant Secretary, Marketing and Inspection Service.

List of Subjects in 7 CFR Part 1240

Honey, Agricultural Research, Reporting and Recordkeeping Requirements, Market Development, and Consumer Information.

Final Order

The following order shall be the detailed means by which the foregoing conclusions may be carried out:

Chapter XI of Title 7 shall be amended by adding Part 1240 to read as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

Definitions

Authority: Honey Research Promotion, and Consumers Information Act; 7 U.S.C. 4601, 4612.

Definitions

§ 1240.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his/her stead.

§ 1240.2 Act.

"Act" means the Honey Research, Promotion, and Consumer Information Act (P.L. 98–590) and any amendments thereto.

§ 1240.3 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1240.4 Honey.

"Honey" means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees.

§ 1240.5 Honey products.

"Honey products" means products wherein honey is a principal ingredient.

§ 1240.6 Producer.

"Producer" means any person who produces honey in any State for sale in commerce.

§ 1240.7 Handle.

"Handle" means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in the current of commerce. Such term shall include selling unprocessed honey that will be consumed without further processing or packaging. Such term shall not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the handler or producer.

§ 1240.8 Handler.

"Handler" means any person who handles honey or honey products.

§ 1240.9 Producer-packer.

"Producer-packer" means any person who is both a producer and handler of honey or honey products.

§ 1240.10 Importer.

"Importer" means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey outside of the United States for sale in the United States.

§ 1240.11 Promotion.

"Promotion" means any action, including paid advertising and public relations, to present a favorable image for honey or honey products to the public with the express intent of improving the competitive position and stimulating sales of honey or honey products.

§ 1240.12 Research.

"Research" means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products.

§ 1240.13 Consumer education.

"Consumer education" means the act of providing information to the public on the usage and care of honey and honey products.

§ 1240.14 Marketing.

"Marketing" means the sale or other disposition in commerce of honey or honey products.

§ 1240.15 Committee.

"Committee" or the "National Honey Nominations Committee" means the Committee established pursuant to § 1240.32.

§ 1240.16 State association.

"State association" or "association" means that organization of beekeepers in a State which is generally recognized as representing the beekeepers of that State.

§ 1240.17 Honey Board.

"Honey Board" or the "Board" means the administrative body established pursuant to § 1240.30.

§ 1240.18 State.

"State" means any of the fifty States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1240.19 Fiscal period and marketing year.

"Fiscal period" and "marketing year" means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

§ 1240.20 Plans and projects.

"Plans" and "projects" means those research, promotion, and consumer education plans, studies, or projects established pursuant to §§ 1240.38 and 1240.39.

§ 1240.21 Part and Subpart.

"Part" means the Honey Research, Promotion, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the order shall be a "subpart" of such part.

Honey Board

§ 1240.30 Establishment and membership.

A Honey Board (hereinafter called the "Board") is hereby established to administer the terms and provisions of this part. The Board shall consist of thirteen (13) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers, two members and two alternates shall be honey handlers, two members and two alternates shall be honey importers, one member and one alternate shall be an officer or employee of a honey marketing cooperative, and one member and one alternate shall be selected to represent the general public. The Board shall be appointed by the Secretary from nominations submitted by the National Honey Nominations Committee pursuant to § 1240.32.

§ 1240.31 Term of office.

The members of the Board and their alternatives shall serve for terms of three years, except the members of the initial Board shall be designated for, and shall serve terms as follows: Four members and alternates shall serve for one-year terms; four shall serve for two-year terms; and five shall serve for three-year terms. No member or alternate shall serve more than two consecutive terms: *Provided,* That those members and alternative serving the initial term of one year may serve two additional consecutive three-year terms. The term of office for the initial Board shall begin immediately on appointment by the Secretary. In subsequent years, the term of office shall begin on April 1. Each member and alternate member shall continue to serve until his/her successor is selected and has accepted.

§ 1240.32 Nominations.

All nominations to the Board authorized under § 1240.30 herein shall be made in the following manner.

(a) Establishment of National Honey Nominations Committee. (1) There is hereby established a National Honey Nominations Committee, hereinafter called the "Committee", which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State Association. Whenever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, and importers not exempt under § 1240.42(a) to make nominations for that State.

(2) If a State Association does not submit a nomination for the Committee, the Secretary may select a member of the honey industry from that State to represent that State on the Committee. However, if a State which is not one of the top twenty honey producing States (as determined by the Secretary) does not submit a nomination, such State shall not be represented on the Committee.

(3) Members of the Committee shall serve for three-year terms, except members of the initial Committee shall serve for terms as follows: One-third of such members shall serve one-year terms; one-third shall serve two-year terms; and one-third shall serve three-year terms. No member shall serve more than two consecutive three-year terms: *Provided,* That those members serving the initial term of one year may serve two additional consecutive three-year terms. The term of office for the initial Committee shall begin immediately on appointment by the Secretary. In subsequent years, the term of office shall begin on January 1.

(4) The Committee shall select its Chairperson by a majority vote.

(5) The members of the Committee shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred in performing their duties as members of the Committee and approved by the Board. Such expenses shall be paid from funds collected by the Board pursuant to § 1240.41.

(b) Nominations to the Board. (1) Except for the member and alternate who represent the general public, the Committee shall nominate the members and alternate members of the Honey Board and submit such nominations promptly to the Secretary for approval. The Committee shall also submit a list of candidates to the Secretary for the public member and alternative public member position. The Secretary may choose from that list of names or, at his/her discretion, choose other candidates to fill the public member and alternate position.

(2) After the first meeting, the Committee shall meet annually to make such nominations, or at the determination of the Chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting.

(3) A majority of the Committee shall constitute a quorum for voting at an annual meeting. In the event of a mail ballot, votes must be received from a majority of the Committee to constitute a quorum.

(4) At least 50 percent of the members from the twenty leading honey-producing states must vote in any nomination of members to the Board.

(5) For the purpose of nominating producer members to the Board, the Secretary shall establish seven regions on the basis of the production of honey.

For the purpose of facilitating initial nominations to the Honey Board, the following regions shall be the initial regions:

Region 1: Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii.

Region 2: Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico.

Region 3: North Dakota and South Dakota.

Region 4: Minnesota, Iowa, Wisconsin, and Michigan.

Region 5: Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama.

Region 6: Florida, Georgia, and Puerto Rico.

Region 7: Illinois, Indiana, Ohio, Kentucky, Virginia, North Carolina, South Carolina, West Virginia, Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine.

(6) Every five years, the Board shall review the regions to determine whether new regions should be established. In making such review, it shall give consideration to: (A) The average quantity of honey produced during the most recent three years; (B) shifts and trends in quantities of honey produced; (C) the equitable relationship of Board membership and districts; and (D) other relevant factors. As a result of this review, the Board may recommend for the Secretary's approval the reestablishment of such regions.

Any such reestablishment of regions shall be made at least six months prior to the date on which terms of office of the Board begin each year and shall become effective at least 30 days prior to such date.

(7) The initial Committee shall within 90 days of the announcement of issuance of this order, or such other period as prescribed by the Secretary, submit in a manner prescribed by the Secretary the following nominations:

One producer member and one alternate producer member from each of the seven regions established by the Secretary;

Two handler members and two alternate handler members from recommendations

made by industry organizations representing handler interests;

Two importer members and two alternate importer members from recommendations made by industry organizations representing importer interests; and

One member and one alternate who are officers or employees of honey marketing cooperatives.

For subsequent years, the Committee shall submit its nominations to the Secretary one month before the new Board terms begin.

§ 1240.34 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that he/she be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, he/she shall remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. At its next meeting, the Honey Nominations Committee shall nominate a replacement for said alternate. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be nominated and appointed in the manner specified in §§ 1240.30 and 1240.32, except that said nomination and replacement shall not be required, if said unexpired terms are less than six months.

§ 1240.35 Procedure.

(a) Seven members, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided,* That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may act upon the concurring votes of a majority of its members by mail, telephone, telegraph, or by other means of communication: *Provided,* That each proposition is explained accurately, fully, and substantially identically to each member. All telephone votes shall be promptly confirmed in writing and recorded in the Board minutes.

§ 1240.36 Attendance.

Members of the Board and the members of any special panels shall be reimbursed for reasonable out-of-pocket expenses incurred when performing Board business. The Board shall have the authority to request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 1240.37 Powers.

The Board shall have the following powers subject to § 1240.61:

(a) To administer this subpart in accordance with its terms and provisions of the Act;

(b) To make rules and regulations to effectuate the terms and conditions of this subpart;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 1240.38 Duties.

The Board shall have, among other things, the following duties:

(a) To meet and organize and to select from among its members a chairperson and such other officers as may be necessary; to select committees and subcommittees from its membership and consultants; to adopt such rules, regulations, and by-laws for the conduct of its business as it may deem advisable.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit to the Secretary for his/her approval, a budget on a fiscal period basis of its anticipated expenses in the administration of this part including the probable costs of all programs or projects and to recommend a rate of assessment with respect thereto;

(d) To investigate violations of the order and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the order.

(e) To develop programs and projects and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs or projects of research, development, advertising, promotion, or education, and the payment of costs thereof with funds collected pursuant to this part;

(f) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it;

(g) To periodically prepare and make public and to make available to producers and importers, reports of its activities carried out, and at least once each fiscal period to make public an accounting of funds received and expended;

(h) To cause its books to be audited by a certified public accountant at the end of each fiscal year and to submit a copy of each audit to the Secretary;

(i) To give to the Secretary the same notice of meetings of the Board and subcommittees as is given to members in order that representatives of the Secretary may attend such meetings;

(j) To submit to the Secretary such information pertaining to this subpart as he/she may request;

(k) To notify honey producers, producer-packers, handlers, and importers of all Board meetings through press releases or other means;

(l) To appoint and convene, from time to time, working committees drawn from producers, honey handlers, importers, exporters, members of the wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, and consumer education programs for honey; and

(m) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of projects or activities to effectuate the declared purpose of the Act.

Research, Promotion, and Consumer Education

§ 1240.39 Research, promotion, and consumer education.

The Board shall develop and submit to the Secretary for approval any plans or projects authorized in this section. Such plans or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate plans or projects for consumer education, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products;

(b) The establishment and conduct of marketing research and development projects to the end that the acquisition

of knowledge pertaining to honey and honey products or their consumption and use may be encouraged or expanded, or to the end that the marketing and utilization of honey and honey products may be encouraged, expanded, improved or made more efficient: *Provided,* That quality control, grade standards, supply management programs, or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as part of this subpart;

(c) The development and expansion of honey and honey product sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each plan or project authorized under this part to insure that each plan or project contributes to an effective and coordinated program of research, education, and promotion and submit such evaluation to the Secretary. If the Board or the Secretary finds that a plan or project does not further the purposes of the Act, then the Board shall terminate such plan or project; and

(f) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, and consumer education, and pay for the costs of such contracts or agreements with funds collected pursuant to § 1240.41.

Expenses and Assessments

§ 1240.40 Budget and expenses.

(a) At the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of the Order, including expenses of the Committee and probable costs of research, promotion, and consumer education.

(b) The Board is authorized to incur expenses for research, promotion, and consumer education, such other expenses for the administration, maintenance, and functioning of the Board and the Committee as may be authorized by the Secretary, any operating reserve established pursuant to §1240.44, and those administrative costs incurred by the Department specified in paragraph (c) of this section. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1240.41, donations from any person not subject to assessments under this order and other funds available to the Board including those collected pursuant to § 1240.67 and subject to the limitations contained therein.

(c) The Board shall reimburse the Department from assessments for administrative costs incurred by the Department with respect to this order after its promulgation. The Department shall also be reimbursed for administrative expenses incurred by it for the conduct of referenda.

§ 1240.41 Assessments.

(a) Each producer and importer shall pay to the Board, upon demand, his/her pro rata share of such expenses as may be approved by the Secretary pursuant to § 1240.40. Such pro rata share shall be the amount established by the Secretary pursuant to paragraph (c) of this section.

(b) Except as provided in § 1240.42 and in paragraphs (e), (f), and (g) of this section, the first handler shall be responsible for the collection of such assessment from the producer and payment thereof to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler.

(c) The assessment on honey shall be levied at a rate fixed by the Secretary which shall be $0.01 per pound of honey or honey used in honey products during the first fiscal period (or portion thereof) after this order is approved in referendum. After that first year, the Board may request the Secretary to increase the assessment rate not more than $0.005 per pound of honey per year: *Provided,* That the assessment never exceeds $0.04 per pound of honey per year. After the first year, the Board may request the Secretary to decrease the assessment rate by any amount it sees fit.

(d) Should a deficit occur during any fiscal period, funds to cover the deficit may be obtained by increasing the rate of assessment subject to the limitations in paragraph (c) of this section. The increased rate of assessment shall be applied to all honey and the honey used in products wherein honey is the primary ingredient sold in the States during that particular fiscal period so that the total payments by each person during each fiscal period will be proportional to the total value of the honey and honey products sold during that period.

(e) The importer of imported honey and honey products shall pay the assessment to the Board at the time of entry of such honey and honey products into any State.

(f) Producer-packers shall pay to the Board the assessment on the honey for which they act as first handler.

(g) Whenever a loan is made on honey under the Honey Loan-Price Support Program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan, and that the amount of such assessment shall be forwarded to the Board, except that the assessment shall not be deducted by the Secretary in the case of a honey marketing cooperative that has already deducted the assessment. When such loan is redeemed, the Secretary shall provide the producer with proof of payment of the assessment.

(h) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to regulations issued hereunder. Such regulations may provide for different handler, importer, or producer-packer payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(i) There shall be a late payment charge imposed on any handler, importer, or producer-packer who fails to remit to the Board the total amount for which any such handler, importer, or producer-packer is liable on or before the payment due rate established by the Board under paragraph (h) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(j) There shall also be imposed on any handler, importer, or producer-packer subject to late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler, importer, or producer-packer is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary, but shall not exceed the maximum legal rate of interest, if any, as established by Congress.

(k) The Board is hereby authorized to accept advance payment of assessments by handlers, importers, or producer-packers that shall be credited toward any amount for which the handlers, importers or producer-packer may become liable. The Board is not obligated to pay interest on any advance payment.

(l) The Board is hereby authorized to borrow money for the payment of expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

§ 1240.42 Exemption from assessment.

(a) A producer who produces less than 6,000 pounds of honey per year, or a producer-packer who produces and handles less than 6,000 pounds of honey per year or an importer who imports less than 6,000 pounds of honey per year shall be exempt from the assessment.

(b) To claim such exemption, a producer, producer-packer, or importer shall submit an application to the Board stating that his/her production, handling or importation of honey shall not exceed 6,000 pounds for the year for which the exemption is claimed.

(c) The Board may recommend to the Secretary that honey exported from the States be exempted from the provisions of this order, and include procedures for the refund of assessments on such honey and such safeguards as may be necessary to prevent improper use of this exemption.

(d) The Board shall determine those States that are operating a program with objectives comparable to the objectives of the Act and recommend to the Secretary that they be exempted from a portion of the assessments collected by the Federal program. The amount of such assessments subject to exemption shall not exceed the amount authorized by the State plan on January 1, 1985, unless a State provides evidence that it was in the process of promulgating a different assessment level on January 1, 1985, then the new assessment level promulgated will be exempt upon approval of the honey producers in that State. Producers having an exemption from a portion of the assessments under this order, due to payment of assessments to a State plan, shall be required to furnish evidence to the Board that the assessments to the State plan have been paid.

§ 1240.43 Producer, importer, and State assessment plan refund.

(a) Any producer or importer who pays an assessment under the authority of this part shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof to the staff of the Board that the producer or importer paid the assessment for which refund is sought, except that producers who have honey pledged as collateral for a loan under the Honey Loan-Price Support Program and therefore have paid the assessment, shall not be eligible for a refund until the loan has been repaid, or the honey has been turned over to the Commodity Credit Corporation. The amount of refunds during any year made to importers, as a percentage of total assessments collected from all importers shall not exceed the amount of refunds made to domestic producers, as a percentage of total assessments collected from such producers. Any demand for refund shall be made by the producer or importer within the time and in the manner prescribed by the Board and approved by the Secretary. Refunds made in accordance with this section shall be paid by the Board in June and December of each year.

(b) Any State authority operating pursuant to a State assessment plan satisfying the conditions of paragraph (b)(1) of this section may obtain a refund of assessments collected by the Board on honey and/or honey products produced in that State except as provided in paragraph (b)(2) of this section.

(1) Refunds shall be paid only if the Secretary certifies that the State assessment plan: (i) Is comparable to the program established under the Act and this part; and (ii) was in existence and in operation on January 1, 1985.

(2) Refunds shall be made directly to States, except that any refunds due directly to producers under this part shall take precedence over State programs and in no event exceed the amount collected by the Board on honey produced in the requesting State, and the amount of any refund shall be limited in accordance with the provisions of this subpart.

(3) Refunds made to a State authority pursuant to this paragraph shall not be included in the formula pertaining to importer refunds as set forth in paragraph (a) of this section.

§ 1240.44 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided,* That the funds in the reserve shall not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

Reports, Books, and Records

§ 1240.50 Reports.

Each handler, importer, and producer-packer who is subject to this part shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For handlers and producer-packers; total quantity of honey acquired during the reporting period; total quantity handled during period; amount of honey acquired from each producer, giving name and address of each producer, including those producers who claim exemption from assessment; copy of statement claiming exemption from assessment from those who claim such exemption; assessments collected or collectable during the reporting period; quantity of honey processed for sale from producer-packer's own production; and record of each transaction for honey on which assessment had already been paid, including statement from seller that assessment had been paid.

(b) For importers; total quantity of honey imported during the reporting period and a record of each importation of honey during such period, giving quantity, date, and port of entry.

§ 1240.51 Books and records.

Each handler, importer, and producer-packer shall maintain and during normal business hours make available for inspection by employees of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the fiscal period of their applicability.

§ 1240.52 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1240.50 and 1240.51 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit; (a) The issuance of general statements based upon the reports of a number of handlers or importers subject to any order, if such statements do not identify the information furnished by any person; (b) the publication by direction of the Secretary, of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of the Order violated by such person. Any disclosure of any confidential information by any employee of the Board shall be considered willful misconduct.

Miscellaneous

§ 1240.60 Influencing governmental action.

No funds collected by the Board under this order shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this subpart.

§ 1240.61 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1240.62 Suspension or termination.

(a) The Secretary shall, whenever he/she finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provisions thereof.

(b) Five years from the date the Secretary issues an order authorizing the collection of assessments on honey under provisions of this subpart, and every five years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the continuation, termination, or suspension of this subpart.

(c) The Secretary shall hold a referendum on the request of the Board, or when petitioned by 10 percent or more of the honey producers and importers to determine if the honey producers and importers favor termination or suspension of this subpart.

§ 1240.63 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the board under any contracts or agreements entered into by it pursuant to § 1240.38; (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and (4) upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the honey research or education programs hitherto authorized.

§ 1240.64 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of any person, with respect to any such violation.

§ 1240.65 Personal liability.

No member, alternate member, or employee of the board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee, except for acts of dishonesty or willful misconduct.

§ 1240.66 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1240.67 Patents, copyrights, inventions, and publications.

Except for a reasonable royalty paid to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 740, 741 and 745

Federal Credit Unions; National Credit Union Share Insurance Fund

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The NCUA Board proposes to amend its regulations relating to the insurance provided by the National Credit Union Share Insurance Fund. The regulations to be amended address advertising by federally-insured credit unions, termination or conversion of Federal insurance, and the extent of insurance coverage provided on accounts. The proposed rules seek to (1) incorporate current practices, policies and interpretations in the regulations themselves and (2) clarify parts 740, 741 and 475 so that they may be more easily understood by the public. Additional clarification of insurance on accounts is provided in an appendix, which has been added in the proposed rules.

DATE: Comments must be received on or before May 30, 1986.

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance, or James J. Engel, Deputy General Counsel, at the above address, or telephone: (202) 357-1065 (Mr. Riley) or (202) 357-1030 (Mr. Engel).

SUPPLEMENTARY INFORMATION:

Overview

As a result of its regulatory review process, NCUA proposes certain changes to its regulations related to Federal share insurance with a view toward simplification and clarification. Of particular concern to NCUA are ambiguities and other shortcomings in these regulations which have contributed to undesirable consequences. For example, many credit unions and their members have conveyed considerable misunderstanding as to how insurance coverage is determined. Similarly, some State credit unions applying for Federal insurance have objected to requirements that are not in the regulations but are in the Insurance Agreement that state credit unions must enter into with the National Credit Union Share Insurance Fund (NCUSIF). The purpose of this notice or proposed rulemaking is to identify and request public comment on the issues related to these concerns and to improve the regulations.

Certain technical amendments have been made throughout Parts 740, 741, and 745 to coincide with the definitions contained in Part 700. The terms "Act," "Administration," "Board," and "Regional Director" are already defined in section 700.1. Therefore, phrases have been reduced to the appropriate individual terms. Since these substitutions are nonsubstantive, they are not specifically identified as amendments each time they appear.

Part 740—Advertising

This Part was formerly titled "Advertisement of Insured Status." That title was revised because it did not accurately reflect the full scope of this Part. This Part primarily addresses the advertisement of a credit union's insured status but, as set forth in the present § 740.2, advertising in general by a federally-insured credit union is also covered. In this regard, § 740.0 would be amended to clarify the applicability of Part 740 to all federally-insured credit unions and to all types of advertising.

Section 740.1 would now have three Subsections. Subsection (a) is the former 740.1, that defined the term "deposit." Subsection (a) now defines "account," that term being substituted for "deposit" in the remaining provisions of this Part. The substance of the definition, however, is essentially the same. "Share draft account" has been substituted for "share deposit account" and the language "or their equivalent under State law" has been added to conform the definition to that contained in section 101(5) of the Act (12 U.S.C. 1752(5)). Subsection (b) adds the definition of "insured credit union" to mean a credit union insured by the NCUSIF, and Subsection (c) explains the acronym "NCUSIF."

Section 740.2, requires all advertising to be accurate. The title and wording are revised with a view towards simplification. The requirement that advertising by a branch office must state the location of the main office has been deleted. Added is a requirement that any advertising mentioning insurance by a party other than the NCUSIF must explain the insurance provided, the identity of the insurer and the fact that the insurer is not affiliated with the NCUSIF or Federal Government.

Several minor wording changes are made to section 740.3 regarding the official sign. The italicized phrases at the beginning of each subsection are considered redundant and are deleted. In Subsection (a), requiring the display of the official sign at teller stations, the proviso regarding the 30–day period for displaying the official sign is reworded and incorporated within the first sentence. The second sentence permitting display prior to the required display date is omitted as unnecessary. Subsection (b) is modified to denote the color of the official sign since Subsection (a) refers to the use of other colors at locations other than stations or windows. In Subsection (c), the statement to be displayed along with the official sign at those facilities where both federally-insured and other credit unions may receive funds is modified to refer specifically to Federal insurance by the NCUSIF. The last sentence is modified to require the statement be legible rather than stating the precise size of the lettering. There are no changes to Subsections (d) and (e).

Changes or deletions are made to § 740.4, regarding the official advertising statement, to reorganize, simplify and clarify this Section. As in the case of § 740.3, italicized introductory language is deleted. Paragraph (a)(1) is reworded and now provides that the Regional Director can grant extensions of the required 30-day period for using the advertising statement. Former subparagraphs (a)(2) (i) and (ii), that addressed temporary exemptions from the advertising requirements, have been deleted as unnecessary since the Board retains the authority to act on a case-by-case basis and the need for an exemption is rarely requested. Subsection (c) has been revised by combining paragraphs (12) through (15) into 740.4(c)(12). Subsection (d), "outside billboard advertising," has been deleted as unnecessary because such advertising would be covered under Subsection (a). Former Subsection (e), use of non-English equivalent of the official advertising statement, is now changed to (d). The subsection has been changed to require prior written approval of the Regional Director rather than the NCUA Board.

One of the major concerns of the Board is public awareness and recognition of the National Credit Union Share Insurance Fund as a Federal entity providing protection for member savings. The Board believes the public is familiar with and understands the terms "FDIC" and "FSLIC" and regards that same familiarity and understanding as desirable for the NCUSIF. For that reason, the phrase "National Credit Union Share Insurance Fund" and the term "NCUSIF" have been added or substituted for NCUA in various provisions of the proposed amendments. (See, for example, the advertising statement in § 740.4(b).) The proposal does not, however, contain a change in the language used in the official sign, § 740.3(b), that contains the terms "NCUA" and "National Credit Union Administration." Since the sign and the regulation should be consistent, the Board requests comments on which terminology is preferable. The appropriate changes would then be made to the sign or the regulations to make them consistent. Additionally, the Board would appreciate any other comments regarding changes to the language on the official sign that would aid the public in understanding the nature of protection afforded by share insurance. An example might be changing the phrase "Your savings insured to $100,000" to read "Your savings federally insured to $100,000."

Part 741—Requirements for Insurance and Voluntary Termination or Conversion of Insurance

The title of this Part was changed to reflect the addition of a new subsection (Section 741.9(b)) that requires notice of Federal insurance cancellation be provided to all members of a credit union that voluntarily converts from Federal to non-Federal insurance. This notice requirement is contained in section 206(d)(2) of the Act (12 U.S.C. 1786(d)(2)). A new § 741.0 is added. This Section sets forth the scope of Part 741 and defines "insured credit union" to mean one insured by the NCUSIF.

One change is made to § 741.1. The word "surety" was changed to "fidelity" wherever it appears, to be consistent with § 701.20 of NCUA Regulations and the Insurance Agreement that is entered into between NCUA and a credit union.

Nonsubstantive changes are made to § 741.2, maximum period for verification of accounts, and 741.3, maximum borrowing authority. Due to the fact that the requirements of §§ 741.2 and 741.3 must be met in order for insurance to continue, language has been added to clarify that both sections apply to credit unions after insurance is approved.

Section 741.4 is a new Section. This Section incorporates items 1 and 2 of the Insurance Agreement and is based on the authority contained in sections 201 and 204 of the Federal Credit Union Act (FCU Act) (12 U.S.C. 1781 and 1784). More specifically, § 741.4 addresses the examination of credit unions applying for Federal insurance and provides that such credit unions may be required to pay the costs incurred by the NCUSIF in carrying out the examination. It also provides, in accordance with the Act, that the Board will rely on examinations conducted by state agencies to the maximum extent feasible.

Section 741.5 is the former § 741.4. Subsection (a), adequacy of reserves, was revised to make the requirements consistent with item 4 of the Insurance Agreement, i.e., a State credit union must, at a minimum, meet the reserve and full and fair disclosure requirements imposed under Title I of the FCU Act and Part 702 of NCUA Rules and Regulations. Unnecessary introductory language was deleted from subsection (b). Subsection 741.5(b)(2) was amended by deleting reference to the Credit Manual and by adding the requirement that lending policies be written. There is no change to (b)(3). Subsection 741.5(b)(4) was added to incorporate item 5 of the Insurance Agreement, types of accounts or securities, into the criteria for insurability. Subsection 741.5(c) was amended by adding a reference to full and fair disclosure requirements. Also, a reference to the Act and the Regulations was added to § 741.5(c) to make it consistent with § 741.5(a). The word "fidelity" is substituted for "surety" in § 741.5(d) for conformity. The words "for its members" is added to § 741.5(e) to clarify that the general purpose of credit unions is to serve members and not the general public. Additionally, a new § 741.5(g) has been added to clarify the Board's authority to impose additional terms or conditions in the Insurance Agreement.

A new § 741.6 is added. This Section applies only in cases where a credit union has obtained non-Federal insurance coverage on amounts in excess of that provided by the NCUSIF. It clarifies the NCUSIF's priority over other insurers in the event of liquidation.

Although not contained in the proposal, the Board requests comments on whether a provision should be added to require notification to members when an insured credit union that does have excess share insurance coverage terminates such coverage. The Board is of the opinion that such a requirement would benefit the membership that may have relied on such excess coverage in establishing their accounts. For example, a husband and wife may utilize one joint account to maintain savings in amounts above the $100,000 coverage provided by the NCUSIF because of the existence of excess coverage. However, if such coverage were terminated, the couple may well want to restructure their savings by using a combination of joint and individual accounts in order to be fully insured. Without notice of termination, they would be unaware that a large portion of their savings would be uninsured.

Section 741.7, the former § 741.5, is amended by changing the definition of "Insurance year" in subsection (b)(1) from "January 1 through December 31" to "July 1 through June 30." This change is made for administrative and operating purposes of the NCUSIF and will not have a substantive effect on credit unions.

A new Subsection (i) is added to 741.7 requiring immediate payment of a capitalization deposit and prorated insurance premiums (if any) by a continuing federally-insured credit union when it has absorbed a nonfederally-insured credit union through a merger. This change coincides with the language of Part 708—Merger of Credit Unions—that is currently in proposed form and has been published for public comment. (See 51 FR 3793, Jan. 30, 1986).

One sentence was added to § 741.7(j), the former § 741.5(i), to clarify that a solvent credit union's capitalization deposit will be refunded in case of a voluntary liquidation.

A new § 741.8 was added. This Section requires a Federal credit union converting to a state charter to submit an insurance application if it desires to maintain Federal insurance of its accounts. This requirement was previously contained in Part 706 of NCUA's Regulations. Part 706 was deleted effective January 12, 1984, (48 FR 56041, Dec. 19, 1983) because it was essentially duplicative of the conversion provisions of the Act. The requirement is still contained in NCUA publication 4411, "Credit Union Conversion Procedure and Conversion Forms" (exp. 12/31/86). It is now proposed that, for purposes of consistency and clarity, the requirement be set forth in these Regulations.

The language and notice contained in former § 741.6 is now designated § 741.9(a). As previously noted, a new subsection (b) has been added to § 741.9. Paragraph (b) addresses the Federal insurance cancellation notice to members referenced in section 206(d)(2) of the Act, 12 U.S.C. 1786(d)(2), where a credit union converts to private share insurance. A notification form is also included.

Section 741.10 is the former § 741.7.

Part 745—Clarification and Definition of Account Insurance Coverage

A new scope section, 745.0, was added to this Part to state as simply as possible, the general principles providing the basis for member account insurance. It is hoped that this Section will aid in the general public's understanding of how member accounts are insured in credit unions. Wherever possible in this Part, the terms "deposit(s)" or "depositor" have been deleted or changed to "account" or "member" to conform the regulation to credit union terminology. The term "deposit" has a different legal significance from "share," "share account," or "account." A deposit represents a debtor/creditor relationship whereas shares in a credit union represent equity. NCUA believes that the previous use of "deposit" caused confusion in credit union liquidations, especially where accountholders' funds exceeded the maximum insurance coverage. Accordingly, the former § 745.1 (a) and (b) have been deleted, and replaced with a new Subsection (a) defining "account."

In addition, three other terms have been added to the definition section to further clarify account coverage. The term "member" has been defined to include those nonmembers permitted to have accounts pursuant to the FCU Act. (§ 745.1(b).) "Public unit" and "political subdivision" were previously defined in § 701.32 (d) and (e), payments on shares by public units, and crossed referenced in § 754.10(c). In April, 1982, however, § 701.32 was deleted and the terms were no longer defined in any regulation. They are now added as §§ 745.1 (c) and (d). The term "public unit" was further defined to specifically include Indian tribes as provided in section 207(c)(2)(A)(v) or the Act (12 U.S.C. 1787(c)(2)(A)(v)).

Section 745.2 was revised to conform to the definitional changes and to reference the Appendix of Examples, which is a major explanatory addition to

this Part. Section 745.3(c), "Accounts held by guardians, custodians, or conservators," is changed to clarify that funds are treated as being owned by the ward or minor for whose benefit the account is established. The title of Subsection (d) is changed from "Custodial Accounts" to "Custodial Loan Accounts" to distinguish the Subsection's applicability to temporary accounts covered in Subsection (c).

Section 745.4, "Testamentary Accounts," has been reorganized into three Subsections. The current Subsection (a) has been divided into Subsections (a) and (b) to separate the definition of a testamentary account from the operative provisions on insurance coverage. The new Subsection (c) is essentially the same as the current Subsection (b). These changes were made for clarification purposes. There are no substantive changes to § 745.5. Those changes which are made are intended to clarify insurance coverage.

Section 745.6 was revised to incorporate § 745.7 with no change as to insurance coverage. Thus, the account coverage of corporations, partnerships and unincorporated associations is now addressed in this one Section. The definition of "independent activity," as that term has been applied by NCUA, as well as the FSLIC and FDIC in those agencies' rules, has been added to this Section. Section 745.7 is reserved, for purposes of the proposal, to avoid renumbering subsequent provisions and thus reduce confusion in comparing the changes proposed for the remainder of this Part with the current provisions.

Sections 745.8, "Joint Accounts," 745.9–1, "Trust Accounts," and 745.9–2, retitled as "IRA/Keogh Accounts," are revised to simplify and clarify account coverage with no change to the actual coverage provided. Section 745.9–2 now expressly states that IRA's are separately insured from Keogh accounts, an interpretation that has been previously applied by NCUA. Section 745.9–3, "Deferred Compensation Accounts," is revised to include specific reference to "§ 401(K)" plans.

Two new subsections were added to § 745.10. The first, § 745.10(a)(5), adds Indian tribes to the list of public units. This change conforms the regulation to section 207(c)(2)(A)(v) of the Act. The second, § 745.10(d) was added with the intent of clarifying that only public unit funds lawfully invested in credit unions will receive insurance coverage. This has been a point of considerable misunderstanding and in some cases has resulted in a loss of funds for the custodian or public unit. The addition of this Subsection should reduce the potential for loss due to misunderstanding about the insured status of the account. Present paragraphs (5) and (6) are changed to (b) and (c) with attendant changes to punctuation.

No substantive changes were made to §§ 745.11, "Accounts evidenced by negotiable instruments," and 745.12, "Accounts obligations for payment of items forwarded for collection by depository institutions acting as agent," but technical change is made to § 745.12. This change reflects NCUA's policy of honoring claims for the insurance on a member's account by parties that have honored items drawn on the account, but where the credit union is closed prior to presentment of the item. Inadvertently, the term "credit union" had been used. Generally, however, the presenting party is another depository institution. Therefore, "depository institution" has been substituted. Section 754.13, "Notification to members/shareholders," is replaced by a more concise provision. The substantive requirement of the former § 745.13, that members be provided information concerning the insurance coverage of their accounts, has been retained. The remaining portion, covering time periods for providing notice and obtaining brochures from NCUA, have been deleted as unnecessary.

Appendix

Previously, NCUA has published a booklet for members describing their insurance coverage and providing examples of such coverage. This booklet has proven to be very helpful to members. NCUA believes it would be even more useful to include with the regulation examples that provide more depth on insurance coverage than the booklet. Accordingly, NCUA has added an appendix, providing further amplification of the insurance rules.

Regulatory Procedures

The NCUA Board has determined and certifies that the proposed amendments, if adopted, will not have significant economic impact on a substantial number of small credit unions (primarily those under $1 million dollars in assets). Further, this rule is largely a clarification and simplication of the current rules. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The proposed changes include two new notification requirements. Section 741.6 requires annual notification to members of the amount in their accounts that are not federally insured. This only applies to a very few credit unions that have share insurance from a private carrier in excess of Federal insurance. Section 741.9(b) sets forth the current statutory notice requirement when a credit union converts from Federal insurance to insurance provided by a non-Federal carrier.

These notice requirements will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Written comments and recommendations regarding the notice requirements of these proposed rules should be forwarded directly to the OMB Desk Officer indicated below at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503

Attn: Robert Neal

List of Subjects

12 CFR Part 740

Credit unions, Advertisements.

12 CFR Part 741

Credit unions, Requirements for insurance.

12 CFR Part 745

Credit unions, Accounts insurance coverage.

By the National Credit Union Administration Board on April 25, 1985.

Rosemary Brady,

Secretary of the Board.

PART 701—[AMENDED]

Accordingly, NCUA proposes to amend its regulations as follows:

1. It is proposed that Parts 740, 741 and 745 be revised to read as follows:

PART 740—ADVERTISING

Sec.

740.0 Scope.
740.1 Definition.
740.2 Accuracy of advertising.
740.3 Mandatory requirements with regard to the official sign and its display.
740.4 Mandatory requirements with regard to official advertising statement and manner of use.

Authority: The authority citation continues to read as 12 U.S.C. 1766, 12 U.S.C. 1781, 12 U.S.C. 1789.

§ 740.0 Scope.

This Part applies to all federally-insured credit unions. It prescribes the requirements with regard to the official sign insured credit unions must display and the requirements with regard to the official advertising statement insured credit unions must include in their advertisements. It also prescribes a general requirement that all other kinds of advertisements must be accurate.

§ 740.1 Definition.

(a) "Account" as used in this Part means share, share certificate or share draft account or their equivalent under state law, of a member or individual of a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member or individual.

(b) "Insured credit union" as used in this Part means a credit union insured by the National Credit Credit Union Share Insurance Fund.

(c) "NCUSIF" means the National Credit Union Share Insurance Fund.

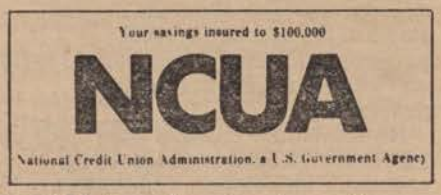
§ 740.2 Accuracy of advertising.

No insured credit union shall use any advertising (which includes print or broadcast media, displays and signs, stationery and all other promotional material) or make any representation which is inaccurate or deceptive in any particular, or which in any way misrepresents its services, contracts, investments, or financial condition. Any advertising that mentions account insurance provided by a party other than the NCUSIF must clearly explain the type and amount of such insurance, the identity of the carrier and the fact that the carrier has no affiliation with the NCUSIF or the Federal Government.

§ 740.3 Mandatory requirements with regard to the official sign and its display.

(a) Each insured credit union shall continuously display the official sign described in paragraph (b) at each station or window where insured account funds or deposits are usually and normally received in its principal place of business and in all its branches 30 days after its first day of operation as an insured credit union. Additional signs in other sizes, colors, or materials, incorporating the basic design of the official sign, may be displayed in other locations within an insured credit union.

(b) The official sign shall be as depicted below, having a blue background with white lettering:



(1) All insured credit unions will automatically be furnished an initial supply of official signs, at no cost, from the Administration for compliance with paragraph (a) of this Section. If the initial supply is not adequate, an immediate request for additional signs must be made. Any credit union that does not have an adequate supply but requests additional signs from the Administration, shall not be deemed to have violated this regulation on account of not displaying an official sign or signs unless the credit union shall omit to display such official sign or signs after receipt thereof.

(2) Official signs reflecting variations in color and materials and additional signs reflecting variations in size, color and materials for use other than as prescribed in paragraph (a) of this section may be procured by insured credit unions from commercial suppliers.

(c) An insured credit union shall not receive account funds at any teller's station or window where any noninsured credit union or institution receives deposits. Excepted from this prohibition are credit union centers, service centers, or branches servicing more than one credit union where only some of the credit unions are insured by the NCUSIF. In such instances there must be placed immediately above or beside each official sign another sign stating "only the following credit unions serviced by this facility are federally insured by the NCUSIF ———" (the full name of each credit union insured will follow the word NCUSIF). The lettering will be of such size and print to be clearly legible to all members conducting share or share deposit transactions.

(d) The Board may require any insured credit union, upon at least 30 days' written notice, to change the wording of its official signs in a manner deemed necessary for the protection of shareholders or others.

(e) For purposes of this section the terms "branch," "station," "teller station," and "window" do not include automated teller machines or point-of-sale terminals.

§ 740.4 Mandatory requirements with regard to the official advertising statement and manner of use.

(a) Each insured credit union shall include the official advertising statement, prescribed in paragraph (b) of this Section, in all of its advertisements except as provided in paragraph (c) of this section.

(1) An insured credit union must include the official advertising statement in its advertisements thirty (30) days after its first day of operations as an insured credit union unless it has been granted an extension by the Regional Director.

(2) In cases where advertising copy not including the official advertising statement is on hand on the date the requirements of this section become operative, the insured credit union may cause the official advertising statement to be included by use of an overstamp or by other means for a period of 6 months or until the supplies are exhausted, whichever, occurs first.

(b) The official advertising statement shall be in substance as follows: "This credit union is insured by the National Credit Union Share Insurance Fund." The short title "Insured by NCUSIF" and a reproduction of the official sign may be used by insured credit unions at their options as the official advertising statement. The official advertising statement shall be of such size and print to be clearly legible.

(c) The following is an enumeration of the types of advertisements that need not include the official advertising statement:

(1) Statements of conditions and reports of condition of an insured credit union which are required to be published by State and Federal law or regulation;

(2) Credit union supplies such as stationery (except when used for circular letters), envelopes, deposits slips, checks, drafts, signature cards, account passbooks, and noninsurable certificates, etc.;

(3) Signs or plates in the credit union office or attached to the buildings or buildings in which the offices are located;

(4) Listings in directories;

(5) Advertisements not setting forth the name of the insured credit union;

(6) Display advertisements in credit union directory, provided the name of the credit union is listed on any page in the directory with a symbol or other descriptive matter indicating it is insured;

(7) Joint or group advertisements of credit union services where the names of insured credit unions and noninsured

credit unions are listed and form a part of such advertisement;

(8) Advertisements by radio which do not exceed thirty (30) seconds in time;

(9) Advertisements by television, other than display advertisement, which do not exceed thirty (30) seconds in time;

(10) Advertisements which are of the type or character making it impractical to include thereon the official advertising statement, including but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains;

(11) Advertisements which contain a statement to the effect that the credit union is insured by the National Credit Union Administration or NCUSIF, or that its accounts and shares or members are insured by the Administration or NCUSIF to the maximum of $100,000 for each member or shareholder;

(12) Advertisements which do not relate to member accounts, including but not limited to:

(i) Advertisements relating specifically and only to the making of loans by the credit union or loan services;

(ii) Advertisements relating specifically and only to safekeeping box business or services;

(iii) Advertisements relating specifically and only to travelers' checks on which the credit union issuing or causing to be issued the advertisement is not primarily liable;

(iv) Advertisements relating specifically and only to loan life insurance.

(d) The non-English equivalent of the official advertising statement may be used in any advertisement: Provided, That the translation has had the prior written approval of the Regional Director.

PART 741—REQUIREMENTS OF INSURANCE AND VOLUNTARY TERMINATION OF CONVERSION OF INSURANCE

Authority: The authority citation continues to read as 12 U.S.C. 1766, 12 U.S.C. 1781, 12 U.S.C. 1789.

§ 741.0 Scope.

The provisions of this Part apply to Federal credit unions, federally-insured state credit unions, and credit unions making application for insurance of accounts pursuant to Title II of the Act unless the context of a provision indicates its application is otherwise limited. It prescribes various requirements for obtaining, maintaining and terminating Federal insurance and the payment of insurance premiums and capitalization deposit. As used in this Part, "insured credit union" means a credit union whose accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

§ 741.1 Minimum fidelity bond requirements.

Any credit union which makes application for insurance of its accounts pursuant to Title II of the Act must possess the minimum fidelity bond coverage stated in §701.20 of this Chapter in order for its application for such insurance to be aproved and for such insurance coverage to continue. A federally-insured credit union whose fidelity bond coverage is terminated shall mail notice of such termination to the Regional Director not less than thirty-five (35) days prior to the effective date of such termination.

§ 741.2 Minimum period for verification of accounts.

The Supervisory Committee of any credit union which makes application for insurance of its accounts pursuant to Title II of the Act must verify or cause to be verified, under controlled conditions, the members' passbooks and accounts with the records of the treasurer not less frequently than once every 2 years. If such verification has not been made within 2 years prior to the date of submission of the application for insurance, the credit union concerned shall cause such verification to be completed prior to submission of such application and at least every 2 years after an application is approved. Information on the verification procedures can be found in §701.12(e).

§ 741.3 Maximum borrowing authority.

Any credit union which makes application for insurance of its accounts pursuant to Title II of the Act, or any insured credit union, must not borrow, from any source, an aggregate amount in exess of 50 per centum of its paid-in and unimpaired capital and surplus, in order for such application to be approved or for such insurance coverage to continue.

§ 741.4 Examination.

As provided in sections 201 and 204 of the Act (12 U.S.C. §§ 1781 and 1784), the Board is authorized to examine any insured credit union or any credit union making application for insurance of its accounts. Such examination may require access to all records, reports, contracts to which the credit union is a party, and information concerning the affairs of the credit union. Upon request, such documentation will be provided to the Board. Any insured credit union or credit union which makes application for insurance may be required to pay the cost of such examination and processing. To the maximum extent feasible, the Board will utilize examinations conducted by state regulatory agencies.

§ 741.5 Criteria.

In determining the insurability of a credit union which makes application for insurance of its accounts pursuant to Title II of the Act, the following criteria shall be applied:

(a) Adequacy of reserves. The credit union must be solvent. In the case of a state-chartered credit union, that credit union must meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on Federal credit unions by section 116 of the Act and Part 702 of NCUA's Rules and Regulations. State-chartered credit unions may be required to establish an additional special reserve for investments if those credit unions are permitted by their respective state laws to make investments not authorized in the Federal Credit Union Act.

(b) Financial condition and policies. The following factors are to be considered in determining whether the credit union's financial condition and policies are both safe and sound:

(1) The existence of unfavorable trends which may include excessive losses on loans (i.e., losses which exceed the regular reserve or its equivalent [in the case of state-chartered credit unions] plus other irrevocable reserves established as a contingent against losses on loans), the presence of special reserve accounts used specifically for charging-off loan balances of deceased borrowers, and an expense ratio so high that the required transfers to reserves create a net operating loss for the period or that the net gain after these transfers is not sufficient to permit the payment of a nominal dividend.

(2) The existence of written lending policies, including adequate documentation of secured loans and the protection of security interests by

recording, bond, insurance, or other adequate means, adequate determination of the financial capacity of borrowers and comakers for repayment of the loan, and adequate determination of value of security on loans to ascertain that said security is adequate to repay the loan in the event of default;

(3) Investment policies which are within the provisions of applicable law and regulations, i.e., the Act and Part 703 of this Chapter for Federal credit unions and the laws of the state in which the credit union operates for state-chartered credit unions.

(4) The presence of any account or security, the form of which has not been approved by the Board, except for accounts authorized by state law for state-chartered credit unions.

(c) Fitness of management. The officers, directors, and committee members of the credit union must adhere to the provisions of applicable law, regulations, its charter and bylaws, and with full and fair disclosure requirements in accordance with Section 116 of the Act and Part 702 of NCUA's Rules and Regulations. No person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted of any criminal offense involving dishonesty or breach of trust, except with the written consent of the Board.

(d) Insurance of member accounts would not otherwise involve undue risk to the NCUSIF. The credit union must maintain adequate fidelity bond coverage as specified in § 741.1. Any circumstances which may be unique to the particular credit union concerned shall also be considered in arriving at the determination of whether or not an undue risk to the NCUSIF is or may be present. For purposes of this Section, the term "undue risk to the NCUSIF" is defined as a condition which creates a probability of loss in excess of that normally found in a credit union and which indicates a reasonably forseeable probability of the credit union becoming insolvent because of such condition, with a resultant claim against the NCUSIF and a decrease therein.

(e) Powers and purposes. The credit union must not perform services other than those which are consistent with the promotion of thrift and the creation of a source of credit for its members except as otherwise permitted by law or regulation.

(f) Letters of disapproval. A credit union which makes application for share insurance and its application is disapproved shall receive a letter indicating the reasons for such disapproval, a citation of the authority for such disapproval, and suggested methods by which the applying credit union may correct these deficiencies and thereby qualify for share insurance.

(g) Nothing herein shall preclude the Board from imposing additional terms or conditions pursuant to the insurance agreement.

§ 741.6 Other insurance or guaranty.

The presence of excess insurance coverage provided by a party other than the NCUSIF shall in no way impair or affect the rights and priorities of the NCUSIF. In the event of insolvency, the NCUSIF has priority over all other insurers to a claim against credit union assets in an amount no less than its aggregate insurance coverage.

§ 741.7 Insurance premium and one percent deposit.

(a) *Scope.* This Section implements the requirements of section 202 of the Act (12 U.S.C. 1782) providing for capitalization of the NCUSIF through the maintenance of a deposit by each insured credit union in an amount equalling one percent of its insured shares and payment of annual insurance premium.

(b) *Definitions.* For purposes of this Section:

(1) "Insurance year" means the period from July 1 through June 30;

(2) "Insured shares" means the total amount of a credit union's share, share draft and share certificate accounts authorized to be issued to members, other credit unions or public units, exclusive of amounts in excess of insurance coverage limits as provided in 12 CFR Part 745, and, in the case of a federally-insured state-chartered credit union, shall include deposit accounts of members, other credit unions and public units if authorized by state law; and

(3) "Normal operating level" means a total value of the NCUSIF equity equalling 1.3 percent of the aggregate of all insured shares in insured credit unions as of the end of the preceding insurance year.

(c) *One Percent Deposit.* Each insured credit union shall maintain with the NCUSIF a deposit in an amount equalling one percent of the total of the credit union's insured shares as of the close of the preceding insurance year. The deposit amount shall be adjusted annually on or before January 31, or as otherwise directed by the Board.

(d) *Premium.* Each insured credit union shall pay to the NCUSIF, on or before January 31 or as otherwise directed by the Board, an insurance premium for that insurance year in an amount equalling one-twelfth of one percent of the credit union's total insured shares as of the close of the preceding insurance year.

(e) *Redistribution of NCUSIF Equity.* When the NCUSIF exceeds its normal operating level, the Board will, at least annually, make a proportionate adjustment for insured credit unions of the amount necessary to reduce the NCUSIF to its normal operating level. Such adjustment will be in the form determined by the Board and may include a waiver of insurance premiums, premium rebates and/or distributions from NCUSIF equity.

(f) *Form 1308.* A certified copy of NCUA Form 1308 will be completed by each insured credit union in connection with its computation and funding of its annual premium payment and any change in its one percent deposit. The Form 1308 provides for any adjustments declared by the Board, resulting in a single net transfer of funds between the credit union and NCUA. Copies of Form 1308 may be obtained from any NCUA Regional office.

(g) *New Charters.* A newly chartered credit union that obtains share insurance coverage from the NCUSIF during the insurance year in which it has obtained its charter shall not be required to pay an insurance premium for that insurance year. The credit union shall fund its one percent deposit on or before January 31 of the following insurance year, but shall not participate in any distribution from NCUSIF equity related to the period prior to the credit union's funding of its deposit.

(h) *Conversion to Federal Insurance.* An existing credit union that converts to insurance coverage with the NCUSIF during an insurance year shall immediately fund its one percent deposit based on the total of its insured shares as of the close of the month prior to conversion and shall pay a premium (unless waived in whole or in part for all insured credit unions during that year) in an amount that is prorated to reflect the remaining number of months in the insurance year. The credit union will be entitled to a prorated share of any distribution from NCUSIF equity declared subsequent to the credit union's conversion.

(i) *Mergers of Non Federally-Insured Credit Unions.* Where a non federally-insured credit union merges into a federally-insured credit union the continuning federally-insured credit union shall immediately pay to the NCUSIF a prorated insurance premium (unless waived in whole or in part for all federally insured credit unions), and an additional one percent deposit based

upon the increase in insured shares resulting from the merger.

(j) *Return of Deposit.* Any insolvent credit union that is closed for involuntary liquidation will not be entitled to a return of its deposit. Any solvent credit union that is closed due to voluntary liquidation shall be entitled to a return of its deposit prior to final distribution of member shares. Any other credit union whose insurance coverage with the NCUSIF terminates will be entitled to a return of the full amount of its deposit immediately after the final date on which any shares of the credit union are insured, except that the Board reserves the right to delay payment by up to one year if it determines that immediate payment would jeopardize the financial condition of the NCUSIF. A credit union that receives a return of its deposit during an insurance year shall have the option of leaving a nominal sum on deposit with the NCUSIF unitl the next distribution from NCUSIF equity and will thus qualify for a prorated share of the distribution.

§ 741.8 Conversion to a state-chartered credit union.

Any Federal credit union which petitions to convert to a state-chartered federally-insured credit union must make application with the Regional Director for continued insurance of its accounts and meet the requirements as stated in the Act and this Part. If the application for continued insurance is not approved, such insurance ceases on the day immediately preceding the date on which the Federal credit union becomes a state credit union.

§ 741.9 Notice of voluntary termination or conversion of insured status.

(a) In the event of the termination of a credit union's status as an insured credit union as provided under subsection 206(a)(1) of the Act, the credit union shall give prompt notice to all of its members that it has ceased to be an insured credit union. The notice, which shall be mailed to each member's last address of record on the books of the credit union shall be as follows:

Notice of Termination

(Date)_____

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Union Act, will terminate as of the close of business on the _____ day of _____;

2. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration;

3. Accounts in the credit union on the _____, day of _____, up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) year after the close of business on the day of _____, _____; Provided, however, that any withdrawals after the close of business on the _____ day of _____, _____, will reduce the insurance coverage by the amount of such withdrawals.

(Name of Credit Union)

(Address)

(b) In the event of the conversion of a credit union's status as an insured credit union as provided under subsection 206(a)(2) of the Act, the credit union shall give prompt notice to all of its members that it has ceased to be a federally-insured credit union. The notice, which shall be mailed to each member's last address of record on the books of the credit union, shall be as follows:

Notice of Conversion

(Date)_____

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Union Act, will cease as of the close of business on the day of _____;

2. As of that date, your deposits are no longer insured by the National Credit Union Share Insurance Fund.

3. Accounts in the credit union on the _____ day of _____, _____, up to a maximum of $ _____ for each member, will be insured by _____, an organization not affiliated with the NCUSIF or the United States Government.

(Name of Credit Union)

(Address)

§ 741.10 Financial and statistical and other reports.

(a) Each operating insured credit union shall file with the National Credit Union Administration on or before January 31 and on or before July 31 of each year a semiannual Financial and Statistical report on Form NCUA 5300, as of the previous December 31 (in the case of the January filing) on June 30 (in the case of the July filing).

(b) Insured credit unions shall, upon written notice from the Board or Regional Director, file such financial or other reports in accordance with instructions contained in such notice.

PART 745—CLARIFICATION AND DEFINITION OF ACCOUNT INSURANCE COVERAGE

Secs.

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Appendix—Examples of insurance coverage afforded accounts in credit unions.

Authority: The authority citation continues to read as 12 U.S.C. 1766, 12 U.S.C. 1781, 12 U.S.C. 1789.

PART 745—CLARIFICATION AND DEFINITIONS OF ACCOUNT INSURANCE COVERAGE

§ 745.0 Scope.

The regulation and appendix contained in this part describe the insurance coverage of various types of member accounts. In general, all types of member share accounts received by the credit union in its usual course of business, including regular shares, share certificates, and share draft accounts are insured. For the purposes of applying the rules in this Part, it is presumed that the owner of funds in an account is an insured credit union member or otherwise eligible to maintain an insured account in a credit union. These rules do not extend insurance coverage to persons not entitled to maintain an insured account or to account relationships that have not been approved by the Board as an insured account. Where there are multiple owners of a single account, generally only that part which is allocable to the member(s) is insured.

§ 745.1 Definitions.

(a) The terms "account" or "accounts" as used in this Part means share, share certificate or share draft account of a member (which includes a nonmember where permitted under the Act) or a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business for which it has given or is obligated to give credit to the account of the member or nonmember: Provided, that for purposes of insured state credit unions, reference in this Part to "share," "share certificate" or "share draft" accounts includes, as determined by the Board,

the equivalent of such accounts under state law.

(b) The terms "member" or "members" as used in this part include those nonmembers permitted under the Act to maintain accounts in an insured credit union including nonmember credit unions and nonmember public units and political subdivisions.

(c) The term "public unit" means the United States, any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, any territory or possession of the United States, any county, municipality, or political subdivision thereof or any Indian tribe as defined in section 3(c) of the Indian Financing Act of 1974.

(d) The term "political subdivision" includes any subdivision of a public unit, as defined in paragraph (c) of the section, or any principal department of such public unit, (1) the creation of which subdivision or department has been expressly authorized by state statute, (2) to which some functions of government have been delegated by state statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation improvement, levee, sanitary, school or power districts and bridge or port authorities and other special districts created by state statute or compacts between the states. Excluded from the term are subordinate or nonautonomous divisions, agencies, or boards within principal departments.

§ 745.2 General principles applicable in determining insurance of accounts.

(a) General: This Part provides for determination by the Board of the amount of members' insured accounts. The rules for determining the insurance coverage of accounts maintained by members in the same or different rights and capacities in the same insured credit union are set forth in the following provisions of this Part. The Appendix provides examples of the application of these rules to various factual situations. Insofar as rules or local law enter into such determinations, the law of the jurisdiction in which the insured credit union's principal office is located shall govern.

(b) The regulations in this Part in no way are to be interpreted to authorize any type of account that is not authorized by the Federal Law or Regulation or State Law or Regulation or by the bylaws of a particular credit union. The purpose is to be as inclusive as possible of all possible situations.

(c) Records: (1) The account records of the insured credit union shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are deposited and on which a claim insurance coverage is founded. Examples would be trustee, agent, custodian, or executor. No claim for insurance based on such a relationship will be recognized in the absence of such disclosure.

(2) If the account records of an insured credit union disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interest of other parties in the account must be ascertainable either from the records of the credit union or the records of the member maintained in good faith and in the regular course of business.

(3) The account records of an insured credit union in connection with a trust account shall disclose the name of both the settlor (grantor) and the trustee of the trust and shall contain an account signature card executed by the trustee.

(4) The interests of the co-owners of a joint account shall be deemed equal, unless otherwise stated on the insured credit union's records in the case of a tenancy in common.

(d) Valuation of trust interests: (1) Trust interests in the same trust deposited in the same account will be separately insured if the value of the trust interest is capable of determination, without evaluation of contingencies, except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–7 of the Federal Estate Tax Regulations (26 CFR 20.2031–7).

(2) In connection with any trust in which certain trust interests are not capable of evaluation in accordance with the foregoing rule, payment by the Board to the trustee with respect to all such trust interests shall not exceed the basic insured amount of $100,000.

(3) Each trust interest in any trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his contribution to the trust.

(4) The term "trust interest" means the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, but does not include any interest retained by the settlor.

§ 745.3 Single ownership accounts.

Funds owned by an individual and deposited in the manner set forth below shall be added together and insured up to $100,000 in the aggregate.

(a) *Individual accounts.* Funds owned by an individual (or by the husband-wife community of which the individual is a member) and deposited in one or more accounts in his own name shall be insured up to $100,000 in the aggregate.

(b) *Accounts held by agents or nominees.* Funds owned by a principal and deposited in one or more accounts in the name or names of agents or nominees shall be added to any individual account of the principal and insured up to $100,000 in the aggregate.

(c) *Accounts held by guardians, custodian, or conservators.*

Funds held by a guardian, custodian, or conservator for the benefit of his ward or for the benefit of a minor under a Uniform Gifts to Minors Act and deposited in one or more accounts in the name of the guardian, custodian, or conservator are insured as funds owned by the ward or minor and shall be added to any individual accounts of the ward or minor and insured up to $100,000 in the aggregate.

(d) *Custodial Loan Accounts.* Loan payments received by a Federal credit union prior to remittance to other parties to whom the loan was sold pursuant to section 107(13) of the Federal Credit Union Act and § 701.23 of NCUA's regulations shall be considered to be funds owned by the borrower and shall be added to any individual accounts of the borrower and insured up to $100,000 in the aggregate.

§ 745.4 Testamentary accounts.

(a) The term "testamentary account" refers to a revocable trust account, tentative or "Totten" trust account, "payable-on-death" account or any similar account which evidences an intention that the funds shall pass on the death of the owner of the funds to a named beneficiary.

(b) If the named beneficiary of a testamentary account is a spouse, child or grandchild of the owner, the account shall be insured up to $100,000 in the aggregate as to each such beneficiary, separately from any other accounts of the owner.

(c) If the named beneficiary of a testamentary account is other than the owner's spouse, child, or grandchild, the funds in such account shall be added to any individual accounts of such owner and insured up to $100,000 in the aggregate.

§ 745.5 Accounts held by executors or administrators.

Funds of a decedent held in the name of the decedent or in the name of the executor or administrator of the decedent's estate and deposited in one or more accounts shall be insured up to $100,000 in the aggregate for all such accounts, separately from the individual

accounts of the beneficiaries of the estate or of the executor or administrator.

§ 745.6 Accounts held by a corporation, partnership, or unincorporated assocation.

Accounts of a corporation, partnership, or unincorporated association engaged in any independent activity shall be insured up to $100,000 in the aggregate. The account of a corporation, partnership or unincorporated association not engaged in an independent activity shall be deemed to be owned by the person or persons owning such corporation or comprising such partnership or unincorporated association and, for account insurance purposes, the interest of each person in such an account shall be added to any other account individually owned by such person and insured up to $100,000 in the aggregate. For purposes of this section, "independent activity" means an activity other than one directed solely at increasing insurance coverage.

§ 745.7 [Reserved]

§ 745.8 Joint accounts.

(a) *Separate insurance coverage.* Accounts owned jointly, whether as joint tenants with right of survivorship, as tenants by the entireties, as tenants in common, or by husband and wife as community property, shall be insured separately from accounts individually owned by any of the co-owners.

(b) *Qualifying Joint Accounts.* Joint accounts are insured separately from individual accounts up to a maximum of $100,000 provided that each of the co-owners has personally signed an account signature card and has a right of withdrawal on the same basis as the other co-owners. The restrictions of this paragraph shall not apply to co-owners of a time certificate of deposit or to any deposit obligations evidenced by a negotiable instrument, but such account must in fact be jointly owned.

(c) *Failure to qualify.* An account owned jointly which does not qualify as a joint account for purposes of insurance of accounts shall be treated as owned by the named persons as individuals and the actual ownership interest of each such person in such account shall be added to any other accounts individually owned by such person and insured up to $100,000 in the aggregate.

(d) *Same combination of individuals.* All joint accounts owned by the same combination of individuals shall be added together and insured up to $100,000 in the aggregate.

(e) *Different combination of individuals.* A person holding an interest in more than one joint account owned by different combinations of individuals may receive a maximum of $100,000 insurance coverage on the total of his interest in those joint accounts.

§ 745.9-1 Trust accounts.

(a) For purposes of this section, "trust" refers to an irrevocable trust.

(b) All trust interests, for the same beneficiary, deposited in an account and established pursuant to valid trust agreements created by the same settlor (grantor) shall be added together and insured up to $100,000 in the aggregate, separately from other accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements.

§ 745.9-2 IRA/Keogh accounts.

(a) The present vested ascertainable interest of a participant or designated beneficary in a trust or custodial account maintained pursuant to a pension or profit-sharing plan described under section 401(d) (Keogh account) or section 408(a) (IRA) of the Internal Revenue Code shall each be insured up to $100,000 separately from other accounts of the participant or designated beneficiary. An IRA account shall be separately insured from a Keogh account.

§ 745.9-3 Deferred compensation accounts.

Funds deposited by an employer pursuant to a deferred compensation plan (including section 401(K) of the Internal Revenue Code) shall be insured up to $100,000 as to the interest of each plan participant who is a member, separately from other accounts of the participant or employer.

§ 745.10 Public unit accounts.

(a) Public funds invested in Federal credit unions and federally-insured state credit unions authorized to accept such investment shall be insured as follows:

(1) Each official custodian of funds of the United States lawfully investing the same in a federally-insured credit union shall be separately insured up to $100,000;

(2) Each official custodian of funds of any state of the United States or any county, municipality, or political subdivision thereof lawfully investing the same in a federally-insured credit union in the same state shall be separately insured up to $100,000;

(3) Each official custodian of funds of the District of Columbia lawfully investing the same in a federally-insured credit union in the District of Columbia shall be separately insured up to $100,000;

(4) Each official custodian of funds of the Commonwealth of Puerto Rico, the Panama Canal Zone, or any territory or possession of the United States, or any county, municipality, or political subdivision thereof lawfully investing the same in a federally-insured credit union in Puerto Rico, the Panama Canal Zone, or any such territory or possession, respectively, shall be separately insured up to $100,000;

(5) Each official custodian of tribal funds of any Indian tribe (as defined in section 3(c) of the Indian Financing Act of 1974) or agency thereof lawfully investing the same in a federally insured credit union shall be separately insured up to $100,000.

(b) Each official custodian referred to in subsection (a)(2), (3), and (4) of this section lawfully investing such funds in a federally-insured credit union outside their respective jurisdictions shall be separately insured up to $100,000; and

(c) For purposes of this section, if the same person is an official custodian of more than one public unit, he shall be separately insured with respect to the public funds held by him for each such unit, but shall not be separately insured with respect to all public funds of the same public unit by virtue of holding different offices in such unit or by holding such funds for different purposes.

(d) For purposes of this section, "lawfully investing" means pursuant to the statutory or regulatory authority of the custodian or public unit.

§ 745.11 Accounts evidenced by negotiable instruments.

If any insured account obligation of a credit union is evidenced by a negotiable certificate account, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, or negotiable traveler's check or letter of credit, the owner of such account obligation will be recognized for all purposes of a claim for insured accounts to the same extent as if his name and interest were disclosed on the records of the credit union provided the instrument was in fact negotiated to such owner prior to the date of the closing of the credit union. Affirmative proof of such negotiation must be offered in all cases to substantiate the claim.

§ 745.12 Account obligations for payment of items forwarded for collection by depository institution acting as agent.

Where a closed credit union has become obligated for the payment of items forwarded for collection by a depository institution acting solely as

agent, the owner of such items will be recognized for all purposes of a claim for insured accounts to the same extent as if his name and interest were disclosed on the records of the credit union when such claim for insured accounts, if otherwise payable, has been established by the executive and delivery of prescribed forms. Such depository institution forwarding such items for the owners thereof will be recognized as agent for such owners for the purpose of making an assignment of the rights of such owners against the closed insured credit union to the Board and for the purpose of receiving payment on behalf of such owners.

§ 745.13 Notification to members/ shareholders.

Information regarding insurance coverage and these rules and regulations shall be conspicuously placed in each branch office and main office of the credit union, and shall also be made available to members upon request. For purposes of this section, an automated teller machine or point of sale terminal is not a branch office.

Appendix—Examples of Insurance Coverage Afforded Accounts in Credit Unions Insured by the National Credit Union Share Insurance Fund

The following examples illustrate insurance coverage on accounts maintained in the same federally insured credit union. They are intended to cover various types of ownership interests and combinations of accounts which may occur in connection with funds invested in insured credit unions. These examples interpret the rules for insurance of accounts contained in 12 CFR Part 745.

The examples, as well as the rules which they interpret, are predicated upon the assumption that, (1) invested funds are actually owned in the manner indicated on the credit union's records and (2) the owner of funds in an account is an insured credit union member or otherwise eligible to maintain an insured account in a credit union. If available evidence shows that ownership is different from that on the institution's records, the National Credit Union Share Insurance Fund may pay claims for insured accounts on the basis of actual rather than ostensible ownership. Further, the examples and the rules which they interpret do not extend insurance coverage to persons otherwise not entitled to maintain an insured account or to account relationships that have not been approved by the Board as an insured account.

A. Single Ownership Accounts

All funds owned by an individual member (or, in a community property state, by the husband-wife community of which the individual is a member) and invested by the member in one or more individual accounts are added together and insured to the $100,000 maximum. This is true whether the accounts are maintained in the name of the individual member owning the funds, in the name of the member's agent or nominee, or in the name of a guardian, conservator or custodian holding the funds for the member's benefit.

Example 1

Question: Members A and B, husband and wife, each maintain an individual account containing $100,000. In addition, they hold a joint account containing $100,000. What is the insurance coverage?

Answer: Each account is separately insured up to $100,000, for a total coverage of $300,000. The coverage would be the same whether the individual accounts contain funds owned as community property or as individual property of the spouses (§ 745.3(a) and § 745.8(a)).

Example 2

Question: Members H and W, husband and wife, reside in a community property state. H maintains a $100,000 account consisting of his separately owned funds and invests $100,000 of community property funds in another account, both of which are in his name alone. What is the insurance coverage?

Answer: The two accounts are added together and insured to a total of $100,000. $100,000 is uninsured (§ 745.3(a)).

Example 3

Question: Member A has $92,500 invested in an individual account, and his agent, Member B invests $25,000 of A's funds in a properly designated agency account. B also holds a $100,000 individual account. What is the insurance coverage?

Answer: A's individual account and the agency account are added together and insured to the $100,000 maximum, leaving $17,500 uninsured. The investment of funds through an agent does not result in additional insurance coverage for the principal (§ 745.3(b)). B's individual account is insured separately from the agency account (§ 745.3(a)). However, if the account records of the credit union do not show the agency relationship under which the funds in the $25,000 account are held, the $25,000 in B's name could, at the option of the NCUSIF, be added to his individual account and insured to $100,000 in the aggregate, leaving $25,000 uninsured (§ 745.2(c)).

Example 4

Question: Member A holds a $100,000 individual account. Member B holds two accounts in his own name, the first containing $25,000 and the second containing $92,500. In processing the claims for payment of insurance on these accounts, the NCUSIF discovers that the funds in the $25,000 account actually belong to A and that B had invested these funds as agent for A, his undisclosed principal. What is the insurance coverage?

Answer: Since the available evidence shows that A is the actual owner of the funds in the $25,000 account, those funds would be added to the $100,00 individual account held by A (rather than to B's $92,500 account) and insured to the $100,000 maximum, leaving $25,000 uninsured. (745.3(b).) B's $92,500 individual account would be separately insured.

Example 5

Question: Member C, a minor, maintains an individual account of $750. C's grandfather makes a gift to him of $100.000, which is invested in another account by C's father, designated on the credit union's records as custodian under a Uniform Gifts to Minors Act. C's father, also a member, maintains an individual account of $100.000. What is the insurance coverage?

Answer: C's individual account and the custodianship account held for him by his father are added together and would be insured to the $100,000 maximum, leaving $750 unisured (§ 745.3(c)). the individual account held by C's father is separately insured to the $100,000 maximum (§ 745.3(a)).

Example 6

Question: Member G, a court appointed guardian, invests in a properly designated account $100,00 of funds in his custody which belong to member W, his ward. W and G each maintain $25,000 individual accounts. What is the insurance coverage?

Answer: W's individual account and the guardianship account in G's name are added together and insured to $100,000 in the aggregate leaving W with $25,000 in uninsured funds. The fact that a guardian has been judicially appointed does not alter the fact that the guardianship funds legally belong to W, the ward, and are insured as W's individually owned funds (§ 745.3(c)). G's individual account is separately insured (§ 745.3(a)).

Example 7

Question: X Credit Union acts as a servicer of FHA, VA, and conventional mortgage loans made to its members but sold to other parties. Each month X receives loan payments, for remittance to the other parties, from approximately 2,000 member mortgagors. The monies received each month total $1,000,000 and are maintained in a custodial loan account. What is the insurance coverage?

Answer: X Credit Union acts as custodian for the 2,000 individual mortgagors. The interest of each mortgagor is separately insured as his individual account (but added to any other individual accounts which the mortgagor holds in the Credit Union) (§ 745.3(d)).

B. Testamentary Accounts

The term "testamentary account" refers to a revocable trust account, tentative or "Totten" trust account, "payable-on-death" account or any similar account which evidences an intention that the funds shall pass on the death of the owner of the funds to a named beneficiary. If the beneficiary is a spouse, child or grandchild of the owner, the funds in all such accounts are insured for the owner up to $100,000 in the aggregate as to each such beneficiary, *separately* from any other individual accounts of the owner. If the beneficiary of such an account is other than a spouse, child or grandchild of the owner, the funds in the account are, for insurance purposes, added to any other individual accounts of the owner and insured up to $100,000 in the aggregate. In the case of a revocable trust account, the person who

holds the power of revocation is deemed to be the owner of the funds in the account. If a revocable trust account is held in the name of a fiduciary other than the owner of the funds, any other accounts held by the fiduciary are insured separately from such revocable trust account.

Example 1

Question: Member H invests $200,000 in a revocable trust account with his son, S, and his daughter, D, as named beneficiaries. What is the insurance coverage?

Answer: Since S and D are children of H, the owner of the account, the funds are insured up to $100,000 as to each beneficiary (§ 745.4(c)). Assuming that S and D have equal beneficial interests ($100,000 each), H is fully insured for this account.

Example 2

Question: Member H invests $100,000 in each of four "payable-on-death" accounts. Under the terms of each account contract, H has the right to withdraw any or all of the funds in the account at any time. Any funds remaining in the account at the time of H's death are to be paid to a named beneficiary. The respective beneficiaries of the four accounts are H's wife, his mother, his brother and his son. H also holds an individual account containing $100,000. What is the insurance coverage?

Answer: The accounts payable on death to H's wife and son are each separately insured to the $100,000 maximum (§ 745.4(b)). The accounts payable to H's mother and brother are added to H's individual account and insured to $100,000 in the aggregate, leaving $200,000 uninsured (§ 745.4(c)).

Example 3

Question: Members H and W jointly invest in a "payable on death" account for the benefit of their son, S, and daughter, D. The account is held by H and W with right of survivorship. What is the maximum insurance coverage available on the account?

Asnwer: Since S and D are the children of H and W, the account will be insured up to $100,000 as to each beneficiary separately from any accounts of the owners, H and W (§ 745.4(b)). H would be entitled to $100,000 insurance for S and $100,000 for D. W would be entitled to the same coverage for a total of $400,000 on the account. However, upon the death of either H or W, insurance coverage would be reduced to $200,000.

C. Accounts Held by Executors or Administrators

All funds belonging to a decedent and invested in one or more accounts, whether held in the name of the decedent or in the name of his executor or administrator, are added together and insured to the $100,000 maximum. Such funds are insured separately from the individual accounts of any of the beneficiaries of the estate or of the executor or administrator.

Example 1

Question: Member A, administrator of Member D's estate, sells D's automobile and invests the proceeds of $12,500 in an account entitled "A Administrator for the estate of D." A has an individual account in that same credit union containing $100,000. Prior to his death, D had opened an individual account of $100,000. What is the insurance coverage?

Answer: The $12,500 is added to D's individual account and insured to $100,000, leaving $12,500 uninsured. A's individual account is separately insured for $100,000 (§ 745.5).

D. Accounts Held by a Corporation, Partnership or Unincorporated Association

All funds invested in an account or accounts by a corporation, a partnership or an unincorporated association engaged in any independent activity are added together and insured to the $100,000 maximum. The term "independent activity" means any activity other than the one directed solely at increasing coverage. If the corporation, partnership or unincorporated association is not engaged in an independent activity, any account held by the entity is insured as if owned by the persons owning or comprising the entity, and the imputed interest of each such person is added for insurance purposes to any individual account which he maintains.

Example 1

Question: Member X Corporation maintains a $100,000 account. The stock of the corporation is owned by members A, B, C and D in equal shares. Each of these stockholders also maintains an individual account of $100,000 with the same credit union. What is the insurance coverage?

Answer: Each of the five accounts would be separately insured to $100,000 if the corporation is engaged in an independent activity and has not been established merely for the purpose of increasing insurance coverage. The same would be true if the business were operated as a bona fide partnership instead of as a corporation (§ 745.6). However, if X corporation was not engaged in an independent activity, then $25,000 (¼ interest) would be added to each account of A, B, C and D. The accounts of A, B, C and D would then each be insured to $100,000, leaving $25,000 in each account uninsured.

Example 2

Question: Member C College maintains three separate accounts with the same credit union under the titles: "General Operating Fund," Teachers Salaries," and "Building Fund." What is the insurance coverage?

Answer: Since all of the funds are the property of the college, the three accounts are added together and insured only to the $100,000 maximum (§ 745.6).

Example 3

Question: The men's club of X Church carries on various social activities in addition to holding several fund raising campaigns for the church each year. The club is supported by membership dues. Both the club and X Church maintain member accounts in the same credit union. What is the insurance coverage?

Answer: The men's club is an unincorporated association engaged in an independent activity. If the club funds are, in fact, legally owned by the club itself and not the church, each account is separately insured to the $100,000 maximum (§ 745.6).

Example 4

Question: The PQR Union, a member of the ABC Federal Credit Union, has three locals in a certain city. Each of the locals maintains an account containing funds belonging to the parent organization. All three accounts are in the same insured credit union. What is the insurance coverage?

Answer: The three accounts are added together and insured up to the $100,000 maximum (§ 745.6).

E. Public Unit Accounts

For insurance purposes, the official custodian of funds belonging to a public unit, rather than the public unit itself, is insured as the account holder. All funds belonging to a public unit and invested by the same custodian in an insured credit union are added together and insured to the $100,000 maximum, regardless of the number of accounts involved and regardless of whether the funds are invested in accounts located in or outside the state. If there is more than one official custodian for the same public unit, the funds invested by each custodian are separately insured up to $100,000. If the same person is custodian of funds for more than one public unit, he is separately insured to $100,000 with respect to the funds of each unit held by him in properly designated accounts. The maximum coverage for an official custodian of funds of the United States would be $100,000.

For insurance purposes, a "political subdivision" is entitled to the same insurance coverage as any other public unit. "Political subdivision" includes any subdivision of a public unit or any principal department of such unit (1) the creation of which has been expressly authorized by state statute, (2) to which some functions of government have been allocated by state statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control.

Example 1

Question: As Comptroller of Y Consolidated School District, A maintains a $125,000 account in the credit union containing school district funds. He also maintains his own $100,000 member account in the same credit union. What is the insurance coverage?

Answer: The two accounts will be separately insured, assuming the credit union's records indicate that the account containing the school district funds is held by A in a fiduciary capacity. Thus, $100,000 of the school's funds and the entire $100,000 in A's personal account will be insured (§ 745.10(a)(2) and 745.3).

Example 2

Question: A, as city treasurer, and B, as chief of the city police department, each have $100,000 in city funds invested in custodial accounts. What is the insurance coverage?

Answer: Assuming that both A and B have official custody of the city funds, each account is separately insured to the $100,000 maximum (§ 745.10(a)(2)).

Example 3

Question: A is Treasurer of X County and collects certain tax assessments, a portion of

which must be paid to the state under statutory requirement. A maintains an account for general funds of the county and establishes a separate account for the funds which belong to the State Treasurer. The credit union's records indicate that the separate account contains funds held for the State. What is the insurance coverage?

Answer: Since two public units own the funds held by A, the accounts would each be separately insured to the $100,000 maximum (§ 745.10(A)(2)).

Example 4

Question: A city treasurer invests city funds in each of the following accounts: "General Operating Account," "School Transportation Fund," "Local Maintenance Fund," and "Payroll Fund." By administrative direction, the city treasurer has allocated the funds for the use of and control by separate departments of the city. What is the insurance coverage?

Answer: All of the accounts are added together and insured in the aggregate to $100,000. Because the allocation of the city's funds is not by statute or ordinance for the specific use of and control by separate departments of the city, separate insurance coverage to the maximum of $100,000 is not afforded to each account (§§ 745.1(c) and 745.10(a)(2)).

Example 5

Question: A, the custodian of retirement funds of a military exchange, invests $1,000,000 in an insured credit union. The military exchange, a nonappropriated fund instrumentality of the United States, is deemed to be a public unit. The employees of the exchange are the beneficiaries of the retirement funds but are not members of the credit union. What is the insurance coverage?

Answer: Because A invested the funds on behalf of a public unit, in his capacity as custodian, those funds qualify for $100,000 share insurance even though A and the public unit are not within the credit union's field of memebership. Since the beneficiaries are neither public units nor members of the credit union they are not entitled to separate share insurance. Therefore, $900,000 is uninsured (§ 745.10(a)(1)).

Example 6

Question: A is the custodian of the County's employee retirement funds. He deposits $1,000,000 in the retirement funds with the credit union. The "beneficiaries" of the retirement fund are not themselves public units nor are they within the credit union's field of membership. What is the insurance coverage?

Answer: Because A invested the funds on behalf of a public unit, in his capacity as custodian, those funds qualify for $100,000 share insurance even though A and the public unit are not within the credit union's field of membership. Since the beneficiaries are neither public nor members of the credit union they are not entitled to separate share insurance. Therefore, $900,000 is uninsured (§ 745.10(a)(2)).

Example 7

Question: A county treasurer deposits in an insured credit union $100,000 in each of the following accounts:

"General Operating Fund"
"County Roads Department Fund"
"County Water District Fund"
"County Public Improvement District Fund"
"County Emergency Fund"

What is the insurance coverage?

Answer: The "County Roads Department," "County Water District" and "County Public Improvement District" accounts would each be separately insured to $100,000 if the funds in each such account have been allocated by law for the exclusive use of a separate county department or subdivision expressly authorized by State statute.

Funds in the "General Operating" and "Emergency Fund" accounts would be added together and insured in the aggregate to $100,000, if such funds are for countywide use and not for the exclusive use of any subdivision or principal department of the county, expressly authorized by State statute (§§ 745.1(c) and 745.10(a)(2)).

Example 8

Question: A, the custodian of Indian tribal funds, lawfully invests $1,000,000 in an account in an insured credit union on behalf of 15 different tribes; the records of the credit union show that no tribe's interest exceeds $100,000. A, as official custodian, also invests $1,000,000 in the same credit union on behalf of 100 individual Indians, who are not members. Each Indian's interest is $10,000. What is the insurance coverage?

Answer: Because each tribe is considered a separate public unit, the custodian of each tribe, even though the same person, is entitled to separate insurance for each tribe (§ 745.10(5)). Since the credit union's records indicate no tribe has more than $100,000 in the account, the $1,000,000 would be fully insured as 15 separate tribal accounts. If any one tribe had more than a $100,000 interest in the funds, it would be insured only to $100,000 and any excess would be uninsured.

However, the $1,000,000 invested on behalf of the individual Indians would not be insured since the individual Indians are neither public units nor, in the example, members of the credit union. If A, is the custodian of the funds in his capacity as an official of a governmental body that qualified as a public unit, then the account would be insured for $100,000, leaving $900,000 uninsured.

F. Joint Accounts

Accounts held under any form of joint ownership valid under state law (whether as joint tenants with right of survivorship, tenants by the entireties, tenants in common or by husband and wife as community property) are insured up to $100,000. This insurance is separate from that afforded individual accounts held by any of the co-owners.

An account is insured as a joint account only if each of the co-owners has personally executed an account signature card and possesses withdrawal rights. An account owned jointly which does not qualify as a joint account for insurance purposes is insured as if owned by the named persons as individuals. In that case, the actual ownership interest in the account of each person is added to any other accounts individually owned by such person and insured up to $100,000 in the aggregate.

Any individual, including a minor, may be a co-owner of a joint account provided that, under State law, he may execute a signature card and withdraw funds from the account on the same basis as the other co-owners.

All funds invested in joint accounts owned by the same combination of individuals are first added together and insured to the $100,000 maximum. Where a member has an interest in more than one joint account and different joint owners are involved, his interests in all of such joint accounts are then added together and insured to $100,000 in the aggregate.

For insurance purposes, the co-owners of any joint account are deemed to have equal interests in the account, except in the case of a tenancy in common. With a tenancy in common, equal interests are presumed unless otherwise stated on the records of the credit union.

Example 1

Question: Members A and B maintain an account as joint tenants with right of survivorship and, in addition, each holds an individual account. Is each account separately insured?

Answer: If both A and B have executed the signature card and possess withdrawal rights with respect to the joint funds, each account is separately insured to the $100,000 maximum (§ 745.8 (a) and (b)).

Example 2

Question: Members H and W, husband and wife, reside in a community property state. Each holds an individual account and, in addition, they hold a qualifying joint account. The funds in all three accounts consist of community property. Is each account separately insured?

Answer: Yes. An account in the individual name of a spouse will be insured up to $100,000 whether the funds consist of community property or separate property of the spouse. A joint account containing community property is also insured up to $100,000. Thus, community property can be used for individual accounts in the name of each spouse and for a joint account in the name of both spouses, each of which accounts is separately insured up to $100,000 (§ 745.3(a) and 745.8(a)).

Example 3

Question: Two accounts of $100,000 each are held by a member and his wife under the following names:

John Doe and Mary Doe, husband and wife, as joint tenants with right of survivorship.
Mrs. John Doe and John Q. Doe (community property).

Are the accounts separately insured?

Answer: No. Both accounts are considered joint accounts owned by the same combination of individuals, regardless of the form of joint ownership. Reversal of names or use of different styles does not change the result, as long as the account owners are in fact the same in both cases. For insurance purposes, the accounts are added together

and insured to the maximum of $100,000 leaving $100,000 uninsured (745.8(b)).

Example 4

Question: The following accounts are held by members A, B and C, each of whom has personally executed signature cards for the accounts in which he has an interest. Each co-owner of a joint account possesses the necessary withdrawals rights.

1. A, as an individual—$100,000
2. B, as an individual—$100,000
3. C, as an individual—$100,000
4. A and B, as joint tenants w/r/o survivorship—$90,000
5. A and C, as joint tenants w/r/o survivorship—$90,000
6. B and C, as joint tenants w/r/o survivorship—$90,000
7. A, B and C, as joint tenants w/r/o survivorship—$90,000.

What is the insurance coverage?

Answer: Accounts numbered 1, 2 and 3 are each separately insured for $100,000 as individual accounts held by A, B and C, respectively (§ 745.3(a)). With regard to accounts number 4, 5, 6 and 7, the respective interests of A, B and C in such accounts are added together for insurance purposes (§ 745.8(e)). The interest of the co-owners of each joint account are deemed equal for insurance purposes (§ 745.2(c)(4)). Thus, A has an interest of $45,000 in account No. 4, $45,000 in account No. 5 and $30,000 in account No. 7, for a total joint account interest of $120,000, of which $100,000 is insured. The interest of B and C are similarly insured.

Example 5

Question: A, B and C hold accounts as set forth in Example 4. Members A and B are husband and wife, C, their minor child, has failed to execute the signature card for account No. 7. In account No. 5, C cannot make a withdrawal without A's written consent. In account No. 6, the signatures of both B and C are required for withdrawal. A has provided all of the funds for accounts numbered 5 and 7. What is the insurance coverage?

Answer: If any of the co-owners of a joint account have failed to meet any of the joint account requirements, the account is not insured as a joint account. Instead, the account is insured as if it consisted of commingled individual accounts of each of the co-owners in accordance with his actual ownership funds, as determined under applicable state law (§ 745.8(c)). Account No. 5 is not insured as a joint account because C does not possess the right to withdraw the funds in accordance with his purported interest in the account. However, account No. 6 does qualify as a joint account for insurance purposes since each co-owner possesses the right to withdraw funds on the same basis. Account No. 7 is not insured as a joint account since C did not personally execute the signature card. Assuming that, under applicable state law, A has the entire actual ownership interest in accounts 5 and 7, all of the funds in these accounts are treated for insurance purposes as individually owned by A (§ 745.8(c)). Thus, the $180,000 in these accounts is added to the $100,000 in account No. 1, A's individual account, and insured up to $100,000 in the aggregate, leaving $180,000 uninsured. Accounts 4 and 6, the remaining joint accounts, are each insured to the $100,000 limit, since they are owned by different combinations of individuals and no co-owner has an aggregate interest in the two accounts in excess of $100,000 (§ 745.8(e)).

Example 6

Question: The following accounts are owned by members A, B and C, each of whom has personnally executed signature cards for the accounts in which he has an interest. Each co-owner possesses withdrawal rights.

1. A, as an individual—$100,000
2. B, as an individual—$100,000
3. A, B and C, as joint tenants w/r/o survivorship—$100,000
4. A, B and C, as joint tenants w/r/o survivorship—$200,000
5. A, and B, as joint tenants w/r/o survivorship—$100,000

What is the insurance coverage?

Answer: Accounts numbered 1 and 2 are each separately insured for $100,000 as individual accounts held by A and B, respectively (§ 745.3(a)). With respect to the joint accounts, accounts numbered 3 and 4 are owned by the same combination of individuals and are added together and insured to a maximum of $100,000 leaving $200,000 uninsured (§ 745.8(d)). A, B and C each have a $33,334 insured interest in accounts 3 and 4. A and B also maintain a joint account, account number 5. Because C has no interest in this account, it is owned by a combination of individuals different from accounts 3 and 4. The interests of A and B in account number 5 are deemed to be equal (§ 745.2(c)(4)). A's $50,000 interest in account 5 is added to his insured interest in accounts 3 and 4, giving him a total of $83,334 insurance coverage for his interests in the various joint accounts, in addition to the insurance in the amount of $100,000 provided for his individual account. B's interests in accounts 3, 4 and 5 are identical to A's and her interests are insured in a like manner.

G. Trust Accounts

A trust estate is the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, that is valid under state law. Thus, funds invested in an account by a trustee under an irrevocable express trust are insured on the basis of the beneficial interests under such trust. The interest of each beneficiary in an account (or accounts) established under such a trust arrangement is insured to $100,000 separately from other accounts held by the trustee, the settlor (grantor) or the beneficiary. However, in cases where a beneficiary has an interest in more than one trust arrangement created by the same settlor, the interests of the beneficiary in all accounts established under such trusts are added together for insurance purposes, and the beneficiary's aggregate interest derived from the same settlor is separately insured to the $100,000 maximum.

A beneficiary's interest in an account established pursuant to an irrevocable express trust arrangement is insured separately from other beneficial interests (trust estates) invested in the same account if the value of the beneficiary's interest (trust estate) can be determined (as of the date of a credit union's insolvency) without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031-10 of the Federal Estate Tax Regulations (26 CFR 20.2031-10). If any trust estates in such an account cannot be so determined, the insurance with respect to all such trust estates together shall not exceed the basic insured amount of $100,000.

In order for insurance coverage of trust accounts to be effective in accordance with the foregoing rules, certain recordkeeping requirements must be met. In connection with each trust account, the credit union's records must indicate the name of both the settlor and the trustee of the trust and must contain an account signature card executed by the trustee indicating the fiduciary capacity of the trustee. In addition, the interests of the beneficiaries under the trust must be ascertainable from the records of either the credit union or the trustee, and the settlor or beneficiary must be a member of the credit union. If there are two or more settlors or beneficiaries, then either all the settlors or all the beneficiaries must be members of the credit union.

Although each ascertainable trust estate is separately insured, it should be noted that in short-term trusts the insurable interest or interests may be very samll, since the interests are computed only for the duration of the trust. Thus, if a trust is made irrevocable for a specified period of time, the beneficial interest will be calculated in terms of the length of time stated. A reversionary interest retained by the settlor is treated in the same manner as an individual account of the settlor.

As stated, the trust must be valid under local law. A trust which does not meet local requirements, such as one imposing no duties on the trustee or conveying no interest to the beneficiary, is of no effect for insurance purposes. An account in which such funds are invested is considered to be an individual account.

An account established pursuant to a revocable trust arrangement is insured as a form of individual account and is treated under Section B, supra, dealing with Testamentary Accounts.

Example 1

Question: Member S invests $45,000 in trust for B, the beneficiary. S also has an individual account containing $90,000 in the same credit union. What is the insurance coverage?

Answer: Both accounts are fully insured. The trust account is separately insured from the individual account of S (§§ 745.3(a) and 745.9-1(a)).

Example 2

Question: S invests funds in trust for A, B, C, D, and E. A, B, and C are members of the credit union, D, E and S are not. What is the insurance coverage?

Answer: This is an uninsurable account. Where there is more than one settlor or more than one beneficiary, all the settlors or all the

beneficiaries must be members to establish this type of account. Since D, E and S are not members, this account cannot legally be established or insured.

Example 3

Question: Member S invests $500,000 in trust for ABC Employees Retirement Fund. Some of the beneficiaries are members and some are not. What is the insurance coverage?

Answer: The account is insured as to the determinable interests of each member beneficiary to a maximum of $100,000 per member. Member interests not capable of evaluation and nonmember interests shall be added together and insured to a maximum of $100,000 in the aggregate (§ 745.9–1).

Example 4

Question: Member A has an individual account of $100,000 and establishes an IRA and accumulates $50,000 in that account. Subsequently A becomes self employed and establishes a Keogh account in the same credit union and accumulates $100,000 in that account. What is the insurance coverage?

Answer: Each of A's accounts would be separately insured for up to $100,000. In the example, A would be fully insured for $250,000 (§ 745.3(a) and § 745.9–2).

[FR Doc. 86–9897 Filed 5–5–86; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 9–86]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Executive Office for Immigration Review, proposes to exempt a new system of records entitled "Records and Management Information System, JUSTICE/EOIR–001," from the access and amendment provisions of the Privacy Act, 5 U.S.C. 552a(d). This exemption is needed to preclude access to any information in the system which has been properly classified under an Executive Order for national security reasons. It is also needed to preclude unauthorized access to certain confidential investigation materials compiled for the purposes of enforcing immigration laws. In addition, the exemption is needed to preclude the amendment of the Record of Proceeding which constitutes the official record of quasi-judicial administrative proceedings. The records may include transcripts of the proceedings, charging documents, investigatory reports, decisional memoranda, and evidentiary materials, such as exhibits and other case-related papers concerning aliens brought into the administrative adjudication process. These records are compiled during the course of proper hearings, established due process procedures; and any relevant investigations, if the individual who is the subject of the record could make ex parte correction of the material, administrative due process could not be achieved.

DATE: All comments must be received by June 5, 1986.

ADDRESS: All comments should be addressed to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, Room 9002, Department of Justice, 601 D Street, NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 272–6474.

SUPPLEMENTARY INFORMATION: A description of the "Records and Management Information System" is being published in the Notice section of today's **Federal Register.**

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative Practice and Procedure; Courts; Freedom of Information; Privacy; and Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General No. 793–78, 28 CFR Part 16 is amended to add § 16.83 as set forth below.

Dated: April 24, 1986.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR Part 16 by adding § 16.83 to read as follows:

§ 16.83 Exemption of the Executive Office for Immigration Review System—Limited Access.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) The Executive Office for Immigration Review's Records and Management Information System (JUSTICE/EOIR–001). This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k) (1) and (2).

(b) Exemption from the particular subsections are justified for the following reasons:

(1) From subsection (d) because access to information which has been properly classified pursuant to an Executive Order could have an adverse effect on the national security. In addition, from subsection (d) because unauthorized access to certain investigatory material could compromise ongoing or potential investigations; reveal the identity of confidential informants; or constitute unwarranted invasions of the personal privacy of third parties.

(2) From subsection (d) (2), (3), and (4) because the Record of Proceeding constitutes an official record which includes transcripts of quasi-judicial administrative proceedings, investigatory materials, evidentiary materials such as exhibits, decisional memoranda, and other case-related papers. Administrative due process could not be achieved by the ex parte "correction" of such materials by the individual who is the subject thereof.

[FR Doc. 86–10056 Filed 5–5–86; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 51e

Project Grants for Health Programs for Refugees

AGENCY: Centers for Disease Control, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Public Health Service proposes to develop regulations which would establish a regulatory base for project grants awarded to State and local health departments to assist them in providing initial health assessments and public health follow-up activities to refugees. These health assessments specifically indentify conditions of possible public health concern such as tuberculosis, and personal health problems such as anemia and dental caries, which could impair the effective resettlement of refugees. The Health Programs for Refugees (HPR) grant program which is authorized by section 412(b)(5) of the Immigration and Nationality Act (INA) is administered by the Centers for Disease Control (CDC) through an intra-agency

agreement with the Office of Refugee Resettlement (ORR), HHS.

DATE: Written comments are invited and must be received on or before July 7, 1986.

ADDRESS: Comments should be addressed in writing to the Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333. Comments received will be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) in Room 211, 1600 Tullie Circle, Atlanta, Georgia. All relevant comments received during the comment period will be considered in developing the final rule.

FOR FURTHER INFORMATION CONTACT: Dr. Laurence S. Farer, Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-2574, or FTS 236-2574.

SUPPLEMENTARY INFORMATION: This NPRM proposes regulations which would govern a grant program first authorized under the broad authority of section 412(c)(3) of the INA (8 U.S.C. 1522(c)(3)), as amended by the Refugee Act of 1980, Pub. L. 96-212, approved March 17, 1980. The Refugee Assistance Amendments of 1982, Pub. L. 97-363, approved October 25, 1982, established a specific authority at section 412(b)(5) of the INA (8 U.S.C. 1522(b)(5)). CDC is responsible for administering this project grant program through an intra-agency agreement with the ORR. This grant program is designed to assist State and local governments in providing public health and general health assessments for refugees. These health assessments specifically identify conditions of possible public health concern and health problems which could impair the effective resettlement of refugees. The term "refugee" is defined in section 101(a)(42) of the INA (8 U.S.C. 1101(a)(42)). Individuals classified as refugees are eligible for services under this program, except certain refugees whose medical care and other resettlement needs are provided through a special matching grant program also administered by the ORR under section 412(c) of the INA (8 U.S.C. 1522(c)).

The provisions of this proposed rule are very similar to regulations under 42 CFR Part 51b, which are applicable to other preventive health service grant programs administered by CDC. This new part contains similar application requirements, including the applicant's plan of operation, the long-term and short-term objectives of the project, an evaluation plan, and a justification for the funds requested. The regulations describe the manner in which the applications will be evaluated and approved, with emphasis on the size of the applicant's refugee population, the extent of health problems among the refugee population, the applicant's ability to coordinate the delivery of needed services, and the consistency of the proposed program with comprehensive refugee resettlement plans required by 45 CFR Part 400.

The Secretary has determined that this proposed rule will not significantly impact on a substantial number of small entities and therefore does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act, Pub. L. 96-345.

The Secretary has also determined that this proposed rule is not a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because it will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Impose a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Section 51e.4 of this proposed rule contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Fay S. Iudicello.

List of Subjects in 42 CFR 51e

Communicable diseases, Grant programs-health, Refugees.

It is, therefore, proposed to amend Title 42 of the Code of Federal Regulations by adding a new Park 51e as set forth below.

Dated: April 22, 1986.

Approved: April 29, 1986.

Otis R. Bowen,

Secretary.

Donald Ian Macdonald M.D.,

Acting Assistant Secretary for Health.

PART 51e—PROJECT GRANTS FOR HEALTH PROGRAMS FOR REFUGEES

Sec.

Authority: Sec. 412(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1522(b)(5)).

§ 51e.1 To which programs do these regulations apply?

The regulations in this part apply to project grants awarded for health assessments for refugees as authorized under section 412(b)(5) of the Immigration and Nationality Act, as amended.

§ 51e.2 Definitions.

As used in the regulations:

"Health assessment" means a physical and clinical examination to determine the health status of a refugee which may include the provision of diagnostic and treatment services and preventive health activities, as related to the presence and severity of a health condition of public health concern or of personal health consequence which could impede the refugee from becoming economically self-sufficient. The term "refugee" is defined in section 101(a)(42) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(42)).

"Secretary" means the Secretary of Health and Human Services (HHS) and any other officer or employee of that Department to whom the authority involved has been delegated.

"State" means one of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

§ 51e.3 Who is eligible to apply for a grant?

An applicant must be a State health agency with responsibility for disease control under State law or a health agency of a political subdivision of a

State which has responsibility for disease control under such law.

§ 51e.4 What information is required in the application?

(a) The initial or renewal application for a project period must include a description of the following:

(1) An assessment of the scope, magnitude, and duration of the problems to which the program will be addressed. If the applicant is a political subdivision of a State, the application must reflect consultation with the State health agency.

(2) The intermediate (1-year budget period) and long-range (2- to 5-year project period) objectives of the project which are specific, measurable, realistic, and time-phased.

(3) A plan of operation, including the relationship of this project to the State's comprehensive refugee resettlement plan as implemented by regulations at 45 CFR Part 400.

(4) An evaluation plan for measuring the achievement of project objectives and the effectiveness with which the plan of operation is carried out.

(5) Prior progress toward the achievement of project objectives when the applicant has received prior health assessment grant funds.

(6) A budget and justification for the grant funds requested, including a description of direct health services that are provided by other health or resettlement agencies and which are related to referral and followup recommendation resulting from the health assessment.

(b) An application for a continuation grant must be submitted for each funding period. This continuation application must include the following:

(1) A budget and justification for the grant funds requested.

(2) A summary of the program activities achieved during the previous budget period, with a review of the extent of achievement of each objective.

(3) A description of any changes in the information shown in the initial application for the project period.

§ 51e.5 How will grant applications be evaluated and the grants awarded?

(a) Within the limits of funds available, the Secretary may award a grant to assist the applicant in carrying out a health program for refugees. Before awarding a grant to a political subdivision of a State, the Secretary will consult with the State health agency. Funds will normally be provided for a period not to exceed one year.

(b) Priorities for funding initial or continuing grants will be based on the following factors:

(1) Evidence of an assessment of the relationship of the proposed project to existing services.

(2) The size of the refugee population, including secondary migrants.

(3) The extent of unmet public health problems among refugees, based upon criteria to be developed by the Secretary.

(4) The need for general health assessments for refugees.

(5) The ability of the applicant to deliver and coordinate the delivery of needed services, including referrals and financing arrangements.

(6) Consistency with the State's comprehensive refugee resettlement plan.

(7) Current performance and ability to maintain program momentum.

§ 51e.6 How can grant funds be used?

(a) Grant funds may be used for costs associated with planning, organizing, and implementing health assessment activities directed to refugees. Such funds may also be used to assist in meeting the cost of:

(1) Activities designed to assure that refugees entering the United States with problems of public health concern receive appropriate follow-up care, and

(2) Activities designed to provide diagnostic and treatment services which are integral to the conduct of public health programs and are otherwise not available.

Any person classified as a refugee is eligible for services under this program, except those refugees whose medical care and other resettlement services are provided through a special matching grant program administered under section 412(c) of the Immigration and Nationality Act (8 U.S.C. 1522(c)).

(b) Grant funds may not be used for construction costs, inpatient care, or rehabilitative services.

§ 51e.7 What other HHS regulations apply to these grants?

Several other HHS regulations apply to grants under this part. These include, but are not limited to:

42 CFR Part 50, Subpart D—PHS grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 76—Debarment and suspension from eligibility for financial assistance

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86 and Appendix A—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 51e.8 What other conditions apply to these grants?

(a) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental continuation, or other award with respect to any approved application or portion of an approved application.

(b) Any funds granted pursuant to this part shall be expended solely for the purposes for which the funds were granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award; and the applicable cost principles prescribed in 45 CFR Part 74, Subpart Q.

(c) The Secretary may, at the time of award, impose additional conditions, including conditions governing the use of information or consent forms and requirements for periodic performance reports, when, in the Secretary's judgment, they are necessary to advance the approved program, the interest of the public health, or the conservation of grant funds.

[FR Doc. 86-10130 Filed 5-5-86; 8:45 am]
BILLING CODE 4160-18-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-29; RM-4941]

FM Broadcast Station in Greenup, KY

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein denies a request for extension of time for filing reply comments in a proceeding

involving the proposed allotment of Channel 289B1 to Greenup, Kentucky.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Order Denying Extension of Time for Filing Reply Comments

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Greenup, Kentucky); MM Docket No. 86–29; RM–4941.

Adopted: April 22, 1986.
Released: April 25, 1986.

By the Chief, Policy and Rules Division.

1. On January 21, 1986, the Commission adopted the *Notice of Proposed Rule Making*, 51 FR 4940, February 10, 1986, proposing the allotment of Channel 289B1 to Greenup, Kentucky, and modification of license of Station WLGC(FM), Channel 288A to specify operation on that channel. The *Notice* was adopted in response to a petition filed by Greenup County Broadcasting, Inc. ("petitioner"), licensee of Station WGLC(FM), Greenup, Kentucky. The reply comment date is April 11, 1986.

2. On April 4, 1986 petitioner filed a motion for extension of time to, and including, April 25, 1986, in which to file reply comments. Petitioner states that the additional time is needed for newly retained engineering counsel to familiarize himself with the pleadings and to prepare a proper response.

3. As stated in § 1.46(a) of the Rules, the Commission does not routinely grant an extension request without good cause. An insufficient basis for an exception to that policy appears to exist here. Petitioner states that since an issue has been raised as to the appropriate class of channel in the particular transmitter site zone, its engineering counsel needs extra time to prepare a reply. However, in the event additional time is justified, petitioner can submit late filed engineering comments accompanied by a motion setting forth sufficient reason for their acceptance in this proceeding.

4. In view of the foregoing, it is ordered, that the motion of petitioner to extend the reply comment date is denied.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–10103 Filed 5–5–86; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 51, No. 87
Tuesday, May 6, 1986

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement: Emergency Repair of Flood Levees in Illinois

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Council proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of its regulations (36 CFR Part 800) that provides for the U.S. Army Corps of Engineers, Rock Island District, to make emergency repairs of flood levees along rivers in Illinois. Repair will be conducted in a way that minimizes or mitigates damage to historic properties, and review of such work will be reduced. Interested parties are encouraged to obtain a copy of the proposed Agreement from the Council and submit comments.

DATE: Comments Due: June 5, 1986.

ADDRESS: Advisory Council on Historic Preservation, ATT: Michael C. Quinn, 1100 Pennsylvania Avenue, NW., Room 803, Washington, DC 20004. Telephone (202) 786–0505.

John M. Fowler,
Acting Executive Director.

[FR Doc. 86–10091 Filed 5–5–86; 8:45 am]
BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Wallace Watershed, SC; Finding of No Significant Impact

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and the Soil Conservation Service Guidelines (7 CFR Part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Wallace Watershed, Marlboro County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201, telephone (803) 765–5681.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Billy Abercrombie, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for erosion control on 9,194 acres of cropland in Marlboro County. The work will be accomplished through conservation plans and long-term contracts involving about 90 farms. The soil and water conservation district will provide leadership for installing the project.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Billy Abercrombie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10–904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: April 28, 1986.

Billy Abercrombie,
State Conservationist.

[FR Doc. 86–10092 Filed 5–5–86; 8:45 am]
BILLING CODE 3410–16–M

Environmental Statements; Wabbaseka East RC&D Measure Plan, AR

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Wabbaseka East RC&D Measure Plan, Jefferson County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Jack C. Davis, State Conservationist, Soil Conservation Service, 2405 Federal Office Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, telephone (501) 378–5445.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Jack C. Davis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a measure plan for reducing flooding and improving drainage on agricultural cropland. The planned work includes 8.2 miles of channel work which includes widening and deepening. Approximately 35 small pipe drops will be installed for erosion control along the ditches. Two low-water weirs will be installed for fish habitat. Turkey nesting areas will be created.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and

interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jack C. Davis.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: April 22, 1986.

Jack C. Davis,

State Conservationist.

[FR Doc. 86-10051 Filed 5-5-86; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; Rush-Presbyterian-St. Luke's Medical Center et al.

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

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

Docket No. 86-155. Applicant: Rush-Presbyterian-St. Luke's Medical Center, 1753 W. Congress Parkway, Chicago, IL 60612. Instrument: Electron Microscope System, Model JEM-1200 EX. Manufacturer: JEOL, Ltd., Japan. Intended use: The instrument is intended to be used to study the ultrastructure of tumor cells, red blood cells and ocular and endocrine tissues. Most specimens studied will be of biological origin, some from experimental animals and some from patients with pathological disorders. Application received by Commissioner of Customs: March 13, 1986.

Docket No. 86-179. Applicant: Cornell University, Materials Science Center, 306-A Thurston Hall, Ithaca, NY 14853. Instrument: Laser Interferometer System. Manufacturer: Transelek Enr., Canada. Intended use: The instrument is intended to be used to perform quantitative acoustic emission studies of indentation-produced cracks in composite materials. In addition, the instrument will be used for the following applications:

(1) Transducer characterization studies;

(2) Non-contact, long-working distance ultrasonic materials testing; and

(3) Quantitative materials absorption/microstructure measurements.

Application received by Commissioner of Customs: April 2, 1986.

Docket No. 86-182. Applicant: The Research Foundation of SUNY, Purchasing, ULB 66, 1400 Washington Avenue, Albany, NY 12222. Instrument: Spectrometer System for Atmospheric Measurements, Model TAMS 150. Manufacturer: Unisearch Associates, Inc., Canada. Intended use: The instrument is intended to be used for the study of the possible damage of Eastern U.S. forests by air pollutants especially sulfur dioxide and hydrogen peroxide. The instrument will also be used for measuring other very important pollutants including nitric acid, nitric oxide, nitrogen dioxide and ammonia. In addition to making measurements in the field for this research project, the instrument will be used as a calibration reference standard. Students working toward their Ph.D. will use the instrument to perform their required original research work. Application received by Commissioner of Customs: April 3, 1986.

Docket No. 86-183. Applicant: Montana College of Mineral Science and Technology, West Park Street, Butte, MT 59701. Instrument: Inductive Ground conductivity Meter, Model EM34-3. Manufacturer: Geonics Ltd., Canada. Intended use: The instrument is intended to be used for educational purposes in the following geophysics courses:

(1) Geophysics 410—Methods of Electrical Exploration;

(2) Geophysics 421—Geophysics Field Camp; and

(3) Geophysics 510—Problems in Electrical Exploration.

Application received by Commissioner of Customs: April 3, 1986.

Docket No. 86-184. Applicant: University of California, Los Alamos National Laboratory, SM-30 Bikini Road, P.O. Box 990, Los Alamos, NM 87545. Instrument: FT Spectrometer, Model DA3.25 with Accessories. Manufacturer: Bomen Inc., Canada. Intended use: The instrument is intended to be used for the study of the molecular structure, properties and energy levels of actinide molecular species and fluorine compounds. Application received by Commissioner of Customs: April 14, 1986.

Docket No. 86-185. Applicant: The Nebraska Methodist Hospital, 8303 Dodge Street, Omaha NE 68114. Instrument: Lithotripter. Manufacturer: Dornier Medizintechnick GmbH, West Germany. Intended use: The instrument is intended to be used for research relating to the cognitive skills of the urologist in the evaluation, treatment, and long-term management of the kidney stone patient. In addition, the instrument will be used for research in the use of lithotripter technology in the treatment of kidney stones versus the use of percutaneous techniques. Other research will include:

(1) Short-term and long-term evaluation of the effects of shock wave application upon renal structure and function.

(2) Short-term and long-term comparison of the use of extracorporeal shock wave treatment and precutaneous treatment upon the incidence of kidney stone recurrence.

(3) Evaluation of the impact of blast path angle and intensity of voltage of the shock wave generator, upon the incidence of post-extracorporeal shock wave lithotripter perirenal hematoma. The instrument will also be used for the training of medical students.

Application received by Commissioner of Customs: April 14, 1986.

Docket No. 86-186. Applicant: University of Nevada-Reno, Reno, NV 98557. Instrument: Circular Dichroism Spectropolarimeter, Model J-500A with Accessories. Manufacturer: JASCO, Japan. Intended use: The instrument will be used for spectroscopic studies, magnetic circular dichroism, kinetics measurements and UV/CD protein studies. The materials to be studied will include bile pigments, proteins, magnetic CD of aromatic hydrocarbons and porphyrins. Educational purposes will include pursuing research objectives in the courses Independent Studies, Thesis and Dissertation (Chemistry 793, 797, 799; Biochemistry 793, 797, 799). Application received by Commissioner of Customs: April 14, 1986.

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

[FR Doc. 86-10095 Filed 5-5-86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 51206-5206]

Continuation of Fire Research Grants Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcing Continuation of Fire Research Grants Program.

SUMMARY: The purpose of this notice is to inform potential applicants that the Center for Fire Research, National Bureau of Standards, is continuing an approximaely $2 million per year Fire Research Program. Previous notices of this research grant program were published in the **Federal Register** on February 20, 1981 (46 FR 13250) and November 19, 1984 (49 FR 45636). (Catalog of Federal Domestic Assistance No. 11.609 "Measurement and Engineering Research and Standards.")

DATE: *Closing Date for Applications:* Proposals must be received no later than close of business May 30, 1986.

ADDRESS: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, Standard Form 424 as referenced under the provisions of OMB Circular A-110 to:

Center for Fire Research, Attn: Dr. Robert S. Levine, National Bureau of Standards, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Levine, (301) 921-3845.

Eligibility: Academic institutions, Non-Federal agencies, and independent and industrial laboratories.

SUPPLEMENTARY INFORMATION: As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NBS Center for Fire Research conducts directly and through grants and cooperative agreements, a basic and applied fire research program. This program has been in existence for several years at approximately the same funding level. No increase in funds has taken place. All grant proposals submitted must be in accordance with the programs and objectives listed below.

Program Objectives

(a) *Exploratory Fire Research*—Ignition and combustion of solids, action of fire retardants, soot formation, and polymer gasification and char formation chemistry.

(b) *Flammability and Toxicity Measurement*—Measurement of the acute toxicity of fire gases, development of test methods and safety criteria, research into the additive or synergistic acute effects of multiple gaseous toxicants, and development of behavior models for incapacitation. Development of laboratory size tests and measurements that are of use in predicting the performance of combustible items (including heat release rate, toxic gas production, and smoke production in full scale fire).

(c) *Fire Performance and Validation*—Obtaining and analyzing experimental data from full scale tests for input to model development. Evaluation of mathematical models and methodology for quantitatively assessing the correlation between the models and full-scale fire test data.

(d) *Hazard Analysis*—Development and evaluation of mathematical smoke and toxic species transport models for large, complex structures. Methods to calculate hazard development vs. time. Methods to stimulate the operation and impact of ventilation systems and components under conditions created by unwanted fires. Some research is carried out into the behavior of persons at risk in fire to calculate how rapidly such persons can evacuate the structure or otherwise find refuge.

(e) *Fire Growth and Extinction*—Research into the physics and chemistry of fire processes such as burning rate, flame spread, fire gas flows, fire suppression, and the development of an understanding of the relationship between these processes as they contribute to compartment fire growth and spread, fire suppression system performance and smoke transport in buildings.

(f) *Compartment Fire Modeling Research*—The development, improvement and validation of: (1) "benchmark" compartment fire model computer codes, and (2) their submodel algorithm components which describe individual fire compartment processes.

(g) Fire Simulation—Intergration of the results of the above programs to create new methods of design for fire safety and calculational tools for such designs.

Application Requirements

The Fire Research Grants Program is limited to innovative ideas which are generated by the proposal writer on what research to carry out and how to carry it out. Proposals will be considered for research projects for one to three years. When a proposal for a multi-year grant is approved, funding will be provided for only the first year of the program. Funding for the remaining years of the program is contingent on satisfactory performance and subject to the availability of funds, but no liability shall be assumed by the government because of non-renewal or extension of a grant. Applicant's proposals should provide:

1. *A brief statementof the basic objectives and research plan.*

a. State concisely the objectives of the proposed research. Describe the present state of knowledge of the problem. An exhaustive review is not needed, but the discussion should show a familiarity with past and current work in the area and demonstrate how the proposed work will advance our understanding of the problem.

b. Describe how the work will be accomplished. Indicate, where appropriate, the range of variables to be explored, the number of tests to be performed, and the method of presenting the results. Describe any unusual techniques, apparatus, or special facilities to be employed in the program.

2. *Statement of Work.* State concisely just what will be accomplished during the program.

3. *Schedule.* Show dates at which major milestones are expected to be attained, including technical reports, papers, and presentations.

4. *Utilization of Results.* Show how the results of the proposed research relate to the Basic Center for Fire Research objective of providing the technical base for reducing the nation's fire loss. Describe how the results will be utilized for this purpose. This may range from the publication of basic data to the development of improved materials and systems to the introduction of findings to regulations and codes.

5. *Program Organization.* Identify the principal professional staff members who will participate in the program and describe their roles and level of effort.

6. *For clarity* of the program objectives, you may contact Dr. Levine by calling (301) 921-3845.

Proposal Review Process

All proposals are assigned to the appropriate group leader of the seven programs listed above for review, including external peer review, and recommendations on funding. Both technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration in the group leader's recommendation to the Center Director.

Applicants should allow up to 60 days processing time.

Proposals are evaluated for technical merit by at least three professionals from NBS, the Center for Fire Research, or technical experts from other interested government agencies and in the case of new proposals, experts from the fire research community at large.

Evaluation Criteria

	Points
Rationality	0–20
Qualification of Technical Personnel	0–20
Resources Availability	0–20
Technical Merit of Contribution	0–40

The results of these evaluations are transmitted to the head of the appropriate research unit in the Center for Fire Research who prepares an analysis of comments and makes a recommendation. The Center for Fire Research unit head will also consider compatibility with programmatic goals and financial feasibility.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 does not apply since this notice does not impose any additional burdens, such as reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public. The reporting requirement will be those contained in OMB Circular A–110.

Additional Requirements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment. Any recipients/applicants who have an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the department are made to pay the debt.

Administrative questions pertaining to the grant process may be directed to the Grant Specialists, Sharon Green, National Bureau of Standards, Room B–158, Gaithersburg, Maryland 20899, telephone number (303) 921–2971.

Dated: May 1, 1986.

Ernest Ambler

Director.

[FR Doc. 86–10089 Filed 5–5–86; 8:45 am]

BILLING CODE 3510–13–M

[Docket No. 60111–6011]

Federal Information Processing Standard 121, Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS)

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved a new standard, which will be published as FIPS Publication 121.

SUMMARY: On April 10, 1985, notice was published in the **Federal Register** (50 FR 14128–29) that a Federal Information Processing Standard for Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS) was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS) and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20234.

This approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications protion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

ADDRESS: Interested parties may purchase copies of this new standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Little, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921–3723.

Dated: May 1, 1986.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 121

(date)

Announcing the Standard for Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS)

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15, Code of Federal Regulations (CFR).

Name of Standard. Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS) (FIPS 121).

Category of Standard. Hardware and Software Standard, Interchange Codes.

Explanation. This standard describes the formats, rules, and procedures for the encoding of alphanumeric text and pictorial information for videotex and teletext applications. This standard is based upon the architecture defined in the multilayered reference model of open systems interconnection (OSI), under development by the International Organization for Standardization (ISO), but this standard does not define the OSI Standard presentation layer protocol itself. This standard defines a specific data syntax for use by OSI presentation layer protocols and some specific semantics for use at the application layer in videotex and teletext applications. This standard is based upon the American National Standard Code for Information Interchange (ASCII) and its extensions (as specified in FIPS 1–2). It is intended to be used in Federal information processing systems, communications systems, and associated videotex and teletext equipment.

Approving Authority. Secretary of Commerce.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. American National Standard X3.110–1983/Canadian Standard T500–1983, Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS).

Related Documents.

a. FIPS PUB 1–2, Code for Information Interchange, Its Representations, Subsets and Extensions (adopts three ANSI standards: X3.4–1977, X3.32–1973,

X3.41–1974 and also has further specifications).

b. FIPS PUB 16–1, Bit Sequencing of the Code for Information Interchange in Serial-by-Bit Data Transmission (adopts ANSI X3.15–1976).

c. FIPS PUB 17–1, Character Structure and Character Parity Sense for Serial-by-Serial-Bit Data Communication in the Code for Information Interchange (adopts ANSI X3.16–1976).

d. FIPS PUB 18–1, Character Structure and Character Parity Sense for Parallel-by-Bit Data Communication in the Code for Information Interchange (adopts ANSI X3.25–1976).

e. FIPS PUB 86, Additional Controls for Use with American National Standard Code for Information Interchange (adopts ANSI X3.64–1979).

f. American National Standard X3.4–1977, Code for Information Interchange (ASCII).

g. American National Standard X3.41–1974, Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code for Information Interchange.

h. American National Standard X3.64–1979, Additional Controls for Use with American National Standard Code for Information Interchange.

i. International Standard ISO 646–1983, Information Processing—ISO 7-bit Coded Character Set for Information Interchange.

j. International Standard ISO 2022–1982, Information Processing—ISO 7-Bit and 8-Bit Coded Character Sets—Code Extension Techniques.

k. International Standard ISO 2375–1974, Data Processing—Procedure for Registration of Escape Sequences.

l. International Standard ISO 4873–1979, Information Processing—8-Bit Coded Character Set for Information Interchange.

m. International Standard ISO 6429–1983, Information Processing—ISO 7-Bit and 8-Bit Coded Character Set—Additional Control Functions for Character Imaging Devices.

n. International Standard ISO 6937/1–1982, Information Processing—Coded Character Sets for Text Communication, Part 1: General Introduction.

o. International Standard ISO 6937/2–1982, Information Processing—Coded Character Sets for Text Communication, Part 2: Latin Alphabetic and Non-Alphabetic Graphic Characters.

p. International Standard ISO 7498–1983, Data Processing—Open Systems Interconnection Basic Reference Model.

q. CCITT Recommendation V.3, 1972, International Alphabet No. 5.

r. CCITT Recommendation F.300–1980, Videotex Service.

s. CCITT Recommendation S.100–1980, International Information Exchange for Interactive Videotex.

Objective. The objective of this standard is to facilitate the interchange of videotex and teletext information between different transaction services and between equipment developed by different manufacturer's of videotex and teletext devices.

Applicability. This standard is applicable to Federal acquisition and use of data processing and communication systems, data systems, system components, and related equipment that may be required to accept, process, store, transmit or interchange character coded information representing alphanumeric text or pictorial information to be displayed or printed on videotex or teletext terminals. This standard is applicable to the representation of alphanumeric text and pictorial information at the interface between host computers and videotex terminals or between teletext data and teletext decoders.

Implementation. This standard becomes effective November 3, 1986. All equipment and data systems to which this standard is applicable that are brought into the Federal Government inventory on or after the effective date of this FIPS PUB must be in conformance with this standard unless a waiver has been obtained in accordance with the waiver provisions given below.

Specifications. This standard adopts in whole American National Standard X3.110–1983/Canadian Standard T500–1983, Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS).

Waivers. Under certain exceptional circumstances, the head of the agency is authorized to waive the application of the provisions of this FIPS PUB. Exceptional circumstances which would warrant a waiver are:

a. Significant, continuing cost or efficiency disadvantages will be encountered by the use of this standard and,

b. The interchange of information between the system for which the waiver is sought and other systems is not anticipated.

Agency heads may act only upon written waiver requests containing the information detailed above. Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, Maryland 20899.

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers on an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting and accompanying document(s), with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

Where to Obtain Copies. Copies of this publication are available for sale from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 121 (FIPSPUB121), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 86–10090 Filed 5–5–86; 8:45 am]
BILLING CODE 3510–CN–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Apparel Products Produced or Manufactured in Sri Lanka

April 30, 1986.

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 May 7, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive dated May 24, 1985 (50 FR 21923) established limits for certain specified categories of cotton, wool and man-made fiber textile products, including Categories 348 (women's, girls' and infants' cotton

trousers), 634 (men's and boys' other coats of man-made fibers) and 648 (women's, girls' and infants' trousers of man-made fibers), produced or manufactured in Sri Lanka and exported during the agreement year which began on June 1, 1985 and extends through May 31, 1986. At the request of the Government of Sri Lanka, carryforward and swing are being applied to the restraint limits for Category 348, increasing it from 239,709 dozen to 272,745 dozen, and Category 648, increasing it from 164,868 dozen to 185,092 dozen, for the current agreement year. The limit for Category 634 is being reduced from 103,894 dozen to 92,417 dozen to account for the amount of swing applied to Categories 348 and 648, as provided in the agreement. The letter to the Commissioner of Customs which follows this notice implements the above amendments.

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 (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 30, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 24, 1985, from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the agreement period which began on June 1, 1985 and extends through May 31, 1986.

Effective on May 7, 1986, the directive of May 24, 1985, as amended, is hereby further amended to include the following adjusted restraint limits for Categories 348, 634 and 648:[1]

Category	Adjusted 12-mo limit [1]
348	272,745 dozen
634	92,417 dozen
648	185,092 dozen

[1] The limits have not been adjusted to account for any imports exported after May 31, 1985.

Also effective on May 7, 1986, I request that you deduct 2,968 dozen from charges to the adjusted restraint limit for Category 648.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-10098 Filed 5-5-86; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Restraint Limits for Certain Cotton Textiles and Cotton Textile Products Produced or Manufactured in Egypt

April 30, 1986.

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 Commisioner of Customs to be effective on May 6, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton Textile Agreement of December 7, and 28, 1977, as amended and extended, between the Governments of the United States and the Arab Republic of Egypt establishes specific limits for carded and combed yarn in Categories 300/301, sheeting in Category 313, and twills and sateens in Category 317, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. Flexibility in the form of swing is available for application to these categories, except that there will be no swing between Categories 300/301, 300 and 301. Carryforward and carryover are not available in the 1986 Agreement year.

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 (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 30, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton Textile Agreement of December 7 and 28, 1977, as amended and extended, between the Governments of the United States and the Arab Republic of Egypt; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 6, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 300/301, 313 and 317, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, in excess of the following restraint limits:

Category	12-mo restraint limits
300/301	9,031,250 pounds of which not more than 7,766,875 pounds shall be in Category 300 and not more than 1,264,375 pounds shall be in Category 301.
313	14,177,812 square yards.
317	7,599,308 square yards.

In 1986 restraint limits are subject to adjustment in the future, as applicable, according to the provisions of the bilateral agreement of December 7, and 28, 1977, as amended and extended, between the Governments of the United States and the Arab Republic of Egypt which provide, in part, that: specific limits may be exceeded by designated percentages to account for swing, except that no swing will be available between Categories 300/301, 300 and 301, provided that a corresponding reduction in equivalent square yards is made in another specific limit during the same agreement year. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Egypt, which have been exported to the United States on

[1] The bilateral agreement provides, in part, that: (1) Specific limits and sublimits may be exceeded by certain designated percentages of the square yard equivalent total, provided the amount of the increase is compensated for by a decrease in equivalent square yards in one or more other specific limits; (2) specific limits may be increased for carryover or carryforward: (3) administrative adjustments or arrangements may be made to resolve minor problems arising in the implementation of the agreement.

and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the levels established for that twelve-month period. To the extent levels established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

Textile products in Categories 300/301, 313 and 317 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-10097 Filed 5-5-86; 8:45 am]

BILLING CODE 3510-DR-M

Changes to the Textile Category System

April 30, 1986.

The CORRELATION, Textile and Apparel Categories with the Tariff Schedules of the United States, Annotated, provides for placement of Tariff Schedules of the United States Annotated (T.S.U.S.A.) numbers in the Textile Category System. On March 31, 1986, the 484e Committee approved the following amendments to the T.S.U.S.A., reflecting certain administrative changes requiring changes to the CORRELATION. These changes are cited in the list which follows this notice.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Agreements and Monitoring Division, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC 20230, (202) 377-4212.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 1, 1986—Changes to the Correlation

Category and New TSUSA numbers effective July 1, 1986.

410—Change 336.6241 to:
336.6205—worsted
336.6210—woolen
410—Change 336.6243 to:
336.6205—worsted
336.6210—woolen
410—Change 336.6247 to:
336.6265—worsted, less than 6 oz.
336.6275—woolen, less than 9 oz.
410—Change 336.6249 to:
336.6260—worsted, 6 oz. and over
410—Change 336.6251 to:
336.6275—woolen, less than 9 oz.
410—Change 336.6252 to:
336.6260—worsted, 6 oz. and over
410—Change 336.6254 to:
336.6270—woolen, 9 oz. and over
336.6275—woolen, less than 9 oz.
410—Change 336.6255 to:
336.6260—worsted, 6 oz. and over
336.6270—woolen, 9 oz. and over
336.6275—woolen, less than 9 oz.
410—Change 336.6257 to:
336.6260—worsted, 6 oz. and over
336.6270—woolen, 9 oz and over
336.6270—woolen, less than 9 oz.
410—Change 336.6441 to:
336.6405—worsted
336.6410—woolen
410—Change 336.6443 to:
336.6405—worsted
336.6410—woolen
410—Change 336.6447 to:
336.6465—worsted, less than 6 oz.
336.6475—woolen, less than 9 oz.
410—Change 336.6449 to:
336.6460—worsted, 6 oz. and over
410—Change 336.6451 to:
336.6475—woolen, less than 9 oz.
410—Change 336.6452 to:
336.6460—worsted, 6 oz. and over
410—Change 336.6454 to:
336.6470—woolen, 9 oz. and over
336.6475—woolen, less than 9 oz.
410—Change 336.6455 to:
336.6460—worsted, 6 oz. and over
336.6470—woolen, 9 oz. and over
336.6475—woolen, less than 9 oz.
410—Change 336.6457 to:
336.6460—worsted, 6 oz. and over
336.6470—woolen, 9 oz. and over
336.6475—woolen, less than 9 oz.
410—Change 337.5070 to:
337.5080—combed
337.5090—Not-combed
666—Change 363.2580 to:
363.2583—sheets
.363.2585—Pillowcases
.363.2587—Other
363—Change 365.6400 to:
365.6410—towels
369—Change 385.6400 to:
365.6450—wash cloths

[FR doc. 86-10096 Filed 5-5-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503, (202) 395-7231. Copies of the submission are available for Joseph G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Large Trader Reports.

Abstract: This data collection operation concerns Federal Regulation of clearing members, futures commission merchants, foreign brokers and large traders holding large futures positions on commodity exchanges.

Control Number: 3038-0009.

ACTION: Revision of a currently approved collection.

Respondents: Individuals or households, farms, and businesses or others for-profit.

Estimated annual burden: 16,670 hours.

Issued in Washington, DC, on April 30, 1986.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-10059 Filed 5-5-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4)

Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

Information Collection Support of the DOD Acquisition Process (Solicitation Requirements) and Related Form (DD Form 1155).

Information concerns contractors' responses to government solicitations and is required to enable the evaluation and processing of contractors' offers.

Reporting is required to permit evaluation of offers.

Businesses or others for profit/small businesses or organizations and nonprofit institutions.

Responses: 27,050,000.

Burden Hours: 85,210,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302 telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301-8000, telephone (202) 697-8334. This is a revision of an existing collection.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

April 30, 1986.

[FR Doc. 86-10042 Filed 5-5-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

April 30, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee to Review the Air Force Science and Technology Programs for Reliability, Maintainability and Logistics will conduct a closed meeting at Luke AFB, AZ and Dyess AFB, TX on 4-5 June 1986, from 8:00 am to 5:00 pm.

The purpose of the meeting will be to review Air Force Reliability, Maintainability and Logistics technology programs and evaluate their completeness and innovativeness to achieve Air Force goals.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-10046 Filed 5-5-86; 8:45 am]

BILLING CODE 3910-01-M

Privacy Act of 1974; New and Altered Record Systems

AGENCY: Department of the Air Force (DAF), DoD.

ACTION: Notices of a new and altered record systems subject to the Privacy Act.

SUMMARY: The Air Force is altering an existing record system and adding a new one to its inventory of record systems subject to the Privacy Act of 1974, as appended. The specific changes to the altered system are set forth below, followed by the altered system notice as amended in its entirety.

DATE: This proposed action will be effective without further notice June 5, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Send comments to Mr. Jon Updike, HQ USAF/DAQD, the Pentagon, Washington, D.C. 2033-5024. Telephone: 202-694-3431. Autovon: 224-3431.

SUPPLEMENTARY INFORMATION:

Department of the Air Force systems of records notices subject to the Privacy Act of 1974, as amended. (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc. 85-10237 (50 FR 22332) May 29, 1985
FR Doc. 85-14122 (50 FR 24672) June 12, 1985
FR Doc. 85-15062 (50 FR 25737) June 21, 1985
FR Doc. 85-26775 (50 FR 46477) November 8, 1985
FR Doc. 85-29261 (50 FR 50337) December 10, 1985
FR Doc. 85-2527 (50 FR 4531) February 5, 1986
FR Doc. 85-4546 (50 FR 7371) March 3, 1986

An altered systems report as required by 5 U.S.C. 552a(o) of the Privacy Act and under guidelines established by paragraph 4b of Appendix 1 for OMB Circular No. A—130—Federal Agency Responsibilities for Maintaining Records About Individuals, dated December 12, 1985, was submitted on March 17, 1986. the new system report was submitted on March 31, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 30, 1986.

ALTERED RECORD SYSTEM

F 900 AF MP B

System Name:

900 AF MP B Suggestions, Inventions, Scientific Achievements (50 FR 22 560) May 29, 1985.

Changes:

System Location:

Delete entry, substitute: "Suggestion Program Division, Directorate of Requirements, Air Force Management Engineering Agency, Randolph AFB TX 78150-6431. Headquarters of major commands and separate operating agencies and direct reporting units. Base personnel offices. Official mailing addresses are in the Department of Defense Directory in the appendix to the Air Force's systems notices and in Air Force Pamphlet (AFP) 12.36, attachment 3."

Categories of individuals covered by the system:

Delete entry, substitute: "Any individual submitting a suggestion, invention, scientific achievement."

Authority for maintenance of the system:

Delete entry and substitute: "5 USC, chapter 45, Incentive Awards; and 10 USC 1124, Cash awards for suggestions, inventions or scientific achievements; as implemented by Air Force Regulation 900-4, The Air Force Suggestion Program."

Purpose(s):

Delete entry and substitute: "Files are originated when personnel initiate a suggestion, invention, or scientific achievement. Case files and computer output products are reviewed by the suggestion office personnel, and are referred to the suggestion awards committee for review when required by governing directives. Copy of approved award is filed in civilian employee's official personnel file. Copy of approved award is not retained elsewhere for military member."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Add: ", computer and computer output products." to existing sentence.

Retrievability:

Add: "or SSN" to the sentence.

Retention and disposal:

Delete and substitute: "Individual name files are retained for not more than one year after end of year in which the final actions was taken. Records of committee action are retained for two years."

System manager(s) and address:

Delete and substitute: "HQ Management Engineering Agency, Randolph AFB TX 78150-6431."

Record access procedures:

Add to existing sentence: "or the installation suggestion program manager."

Contesting record procedures:

Add to existing sentence: "and are published in AFB 12-35. (32 CFR Part 806b)."

F900 AF MP B

SYSTEM NAME:

900 AF MP B Suggestions, Inventions, Scientific Achievements.

SYSTEM LOCATION:

Suggestion Program Divisions, Directorate of Requirements, Air Force Management Engineering Agency, Randolph AFB TX 78150-6431. Headquarters of major commands and separate operating agencies and direct reporting units. Base personnel offices. Official mailing addresses are in the Department of Defense Directory in the appendix to the Air Force's systems notices and in Air Force Pamphlet (AFP) 12-36, attachment 3.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual submitting a suggestion, invention, scientific achievement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files include suggestion forms, evaluations and substantiating documentation consisting of forms, certificates, administrative correspondence; records of committee actions; award actions; reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC, chapter 45, Incentive Awards; and 10 USC 1124, Cash awards for suggestions, inventions or scientific achievements; as implemented by Air Force Regulation 900-4, The Air Force Suggestion Program.

PURPOSE(S):

Files are originated when personnel initiate a suggestion, invention, or scientific achievement. Case files and computer output products are reviewed by the suggestion office personnel, and are referred to the suggestion awards committee for review when required by governing directives. Copy of approved award is filed in civilian employee's official personnel file. Copy of approved award is not retained elsewhere for military member.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on cards, computer and computer output products.

RETRIEVABILITY:

Filed by name or SSN

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons(s) responsible for servicing the records in performance of their official duties who are properly screened and cleared of need-to-know.

RETENTION AND DISPOSAL:

Individual name files are retained for not more then one year after end of year in which the final action was taken. Records of committee action are retained for two years.

SYSTEM MANAGER(S) AND ADDRESS:

HQ Management Engineering Agency, Randolph AFB TX 78150-6431.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURE:

Individual can obtain assistance in gaining access from the System Manager or the installation suggestion program manager.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in AFR 12-35. (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Information obtained from source document (Suggestion Form) include name, Social Security Number, job title, home or mailing address, grade and organizational address.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

New Record System

F125 AFSC A

SYSTEM NAME:

125 AFSC A AFSC Badge and Vehicle Control Records

SYSTEM LOCATION:

Headquarters Air Force Systems Command (HQ AFSC/SIRS and HQ AFSC/SP), Andrews AFB MD 20334-5000; AFSC bases.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

AFSC military and civilian personnel and visitors to AFSC hadquarters and installations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Badge and vehicle control records to include name; home address; home telephone; citizenship; grade or rank; SSN; clearance level; company employed by; military address; vehicle state license tag data; vehicle make, year, type and color; decal number; revoked license status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

Badge records are used to record building/area-entry credential information, including information on the loss or theft of these credentials. Motor vehicle records are used to identify vehicles parked in an unsafe manner, enforce vehicle flow plan, notify owners, in case of evacuation and maintain effective security plan.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket rourtine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computers and computer output products, and in paper form.

RETRIEVABILITY:

Records are retrieved by SSN.

SAFEGUARDS:

Records are accessed by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked babinets, locked rooms, or buildings with controlled entry. Computer records are controlled by computer system software.

RETENTION AND DISPOSAL:

Badge records are destroyed immediately after badge is premanently surrendered or confiscated. Vehicle records are destroved immediately after termination of registration.

SYSTEM MANAGER(S) AND ADDRESS:

Hq AFSC/SP, Andrews AFB MD 20334–5000 for HQ AFSC, or Chief of Security Police for AFSC installations.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the system manager.

RECORD ACCESS PROCEDURE:

Individuals may gain access from the system manager

CONTESTING RECORD PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35.

RECORD SOURCE CATEGORIES:

Information obtained from individuals and from automated system interface.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86–10044 Filed 5–5–86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Contingency Arrangements for the Coastal Engineering Research Board (CERB) Meeting

In the event of adverse weather conditions or unforeseen circumstances, the following alternate agendas or changes will be made at the 45th meeting of CERB now scheduled in Fairbanks, Prudhoe Bay, Valdez, and Homer, Alaska, on May 14–16 1986. See announcement of meeting published in the **Federal Register**, Vol. 51, No. 78, dated Wednesday, April 23, 1986, 15361.

Change Number 1: In the event of adverse weather in Prudhoe Bay causing the cancellation of the field trip on May 14, there will be presentations and discussions scheduled on that day in Fairbanks. On May 15 the flight of Valdez with tour is scheduled, and a discussion of the field trip is scheduled in Homer, Alaska. On May 16 presentations will be made and participation by the public is scheduled in Homer for 10:00 a.m. The meeting will adjourn at 11:30 a.m.

Change Number 2: In the event that the field trip to Valdez on May 15 is cancelled due to adverse weather, the following will apply: On May 14 there will still be presentations in Fairbanks and a field trip on Prudhoe Bay; on May 15 there will be a fligh to Homer, Alaska, and discussions and presentations in the afternoon; the session on May 16 will consist of presentations and participation by the public is scheduled for 1:55 p.m. The meeting will adjourn at 3:30 p.m.

Change Number 3: In the event the trip to Homer on May 14 is cancelled due to adverse weather or other unforeseen events, the entire meeting will be held in Fairbanks. The session on May 14 will still consist of presentations and a tour of Prudhoe Bay. On May 15 a flight to Valdez and a tour of their facilities is planning, return to Fairbanks, and a discussion of the field trip is planned. The May 16 session will consist of presentations and participation by the public is scheduled for 3:05 p.m. The meeting will adjust at 4:35 p.m.

To find out if the original agenda has been changed, please call Mr. Carl D. Stormer, U.S. Army Engineer District, Alaska, at 907/753–2741.

Allen F. Grum,

Colonel USA, Executive Secretary.

[FR Doc. 86–10166 Filed 5–5–86; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for MSC Afloat Employment MSC 12310/1

The information obtained is used to establish eligibility for MSC afloat employment and provide information for applicant evaluation for employment based on past work experience and education. Because the need for specific license and certification information is required, a custom form is necessary. The MSC Form is used in lieu of an SF–171.

Individuals

Responses 11,500

Burden hours 17,250

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. John J. Foley, Department of the Navy, Military Sealift Command, Washington, DC 20390, telephone 202–282–2624.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 30, 1986.

[FR Doc. 86–10043 Filed 5–5–86; 8:45 am]

BILLING CODE 3810-01-M

Chief of Naval Operations, Executive Panel Advisory Committee, Strategic Defense and Naval Warfare Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Defense and Naval Warfare Task Force will meet May 29–30, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in strategic defense architecture, and related intelligence. The entire agenda for the meeting will consist of discussions of key issues regarding strategic defense systems in support of U.S. national security. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: May 1, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86–10107 Filed 5–5–86; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Over the Horizon Targeting Capabilities will meet on May 22–23, 1986, at the Science Applications International Corporation, 1710 Goodridge Drive, McLean, Virginia. The meeting will commence at 9:00 A.M. and terminate at 4:30 P.M. on May 22 and commence at 9:00 A.M. and terminate at 12:30 P.M. on May 23, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to conduct a comprehensive review of existing and planned over the horizon targeting programs; determine current and projected over the horizon targeting and related command and control capabilities and limitations; identify any problems and recommend solutions. The agenda for the meeting will consist of technical briefings addressing over the horizon targeting capabilities, programs, funding and shortfalls. These briefings will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of the Chief of Naval Research (Code OONR), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 1, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86–10108 Filed 5–5–86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A joint meeting of Subcommittees A and C of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 13, 14 and 15, 1986, at the offices of Exxon Corporation, 1251 Avenue of the Americas, New York, New York, beginning at 9:00 a.m. on May 13. The agenda for the meeting is as follows:

1. Opening remarks.
2. U.S. Plan of Action.
3. Future work program.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of Subcommittees A and C of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB or the IEA.

Issued in Washington, DC, May 1, 1986.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 86–10179 Filed 5–5–86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collections, listed at the end of this notice, to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The collection number(s); (2) Collection title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Affected public; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (9) A brief abstract describing the proposed collection and, briefly, the respondents.

DATE: Comments should be filed within 10 days of publication of this notice. Last notice published Wednesday, April 2, 1986 (51 FR 11336).

ADDRESS: Address comments to Mr. Vartkes Broussalian, Department of

Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments may also be addressed to, and copies of the submissions obtained from, Mr. Gross at the address below.)

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Data Collection Services Division (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252–2308.

SUPPLEMENTARY INFORMATION: This request constitutes a revision to the original proposal submitted to OMB on Thursday, October 17, 1985 (50 FR 42078) covering Forms EIA–1, 3, 4, 5, 5A, 6, 7A, 7A(Supp), 20, and 97. In this proposal we are no longer seeking approval for Forms EIA–5A and EIA–7A(SPP); we also have modified the proposal for the Forms EIA–3, 5 and 97. Forms EIA–1, 4, 6, 7A and 20 will remain the same.

Furthermore, we are seeking approval for this proposal only through March 1987. Within the next several months, however, we intend to propose further modifications to the EIA–3, 5, 6 and 7A. We will provide ample opportunity for public and other agency comments during the period. In any event, we plan to submit this revised proposal to OMB in the early autumn of 1986.

If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise Mr. Broussalian of your intent as early as possible.

Issued in Washington, DC, May 2, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE COLLECTIONS UNDER REVIEW BY OMB

Collection No. (1)	Collection title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Affected public (6)	Estimated number of respondents (7)	Annual respondent burden hrs (8)	Abstract (9)
EIA–1, 3, 4, 5, 6, 7A, 20 and 97.	Coal program package.	Revision	Weekly, quarterly, annual.	Mandatory	Businesses or other for profit.	9627	25737	The coal surveys collect data on coal production, consumption, stocks, prices, imports, and exports. Data are collected from manufacturing plants, coke producers, coal mining operations, coal purchasers and distributors, coal-consuming electric utilities, and boiler manufacturers. The data are published, used in EIA models and analyses, and used by other government and private organizations.

[FR Doc. 86–10222 Filed 5–5–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TA86–3–2–000,001]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

April 29, 1986.

Take notice that on April 23, 1986, East Tennessee Natural Gas Company (East Tennessee) filed Seventeenth Revised No. 4 to Original Volume No. 1 of its FERC Gas Tariff, to be effective April 25, 1986.

East Tennessee states that the purpose of the filing is to reflect a gas rate reduction based on the projected cost of gas supplies purchased from East Tennessee's local producers during the period April 25, 1986 throught June 30, 1986.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426 in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 7, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant's parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–10076 Filed 5–5–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA86–4–2000 and 001]

Granite State Gas Transmission, Inc.; Proposed Changes In Rates

April 29, 1986.

Take notice that on April 23, 1986, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the following revised tariff sheets containing changes in rates in its FERC Gas Tariff, First Revised Volume No. 1.

Proposed Tariff Sheets and Effective Dates

Substitute Fifteen Revised Sheet No. 7—April 1, 1985

Substitute Thirteenth Revised Sheet No. 7—November 1, 1985

Substitute Second Revised Sheet No. 7–A—November 1, 1985

Second Substitute Thirteenth Revised Sheet No. 7—December 31, 1985

Third Revised Sheet No. 7–A—December 31, 1985

Substitute Fifth Revised Sheet No. 8—August 1, 1985

Sixth Revised Sheet No. 8—November 1, 1985

Seventh Revised Sheet No. 8—January 1, 1985

According to Granite State, the filing includes reduced sales rates reflecting an out-of-cycle purchased gas cost adjustment applicable to sales to Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities), effective April 1, 1986. Granite State further states that its reduced gas costs result from a change in its gas purchase pattern, reducing purchases of available firm supplies to utilize a favorable "spot market" purchase. Also, Granite State states that the reduced gas costs reflect a reduction in gas costs from a firm supplier, effective April 1, 1986.

The effect of the reduction in gas costs, according to Granite State, is an annual reduction in the rates for sales to Bay State of $12,092,706 and an annual reduction in the rates for sales to Northern Utilities of $1,566,130. Bay State will also experience an additional annual reduction of $528,000 as a result

of a reduction in certain transportation costs, Granite State further states.

According to Granite State, the filing also includes revised rates for a storage service, a storage-related transportation service and other transportation services for Bay State which track changes in suppliers' rates for these services pursuant to certificate orders issued by the Commission.

According to Granite State, copies of the filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 7, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10077 Filed 5-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-6-51-003]

Great Lakes Gas Transmission Company; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

April 29, 1986.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on April 24, 1986, tendered for filing Second Substitute Fifty-Eighth Revised Sheet No. 57, First Revised Volume No. 1 to its FERC Gas Tariff.

Grat Lakes states that the filing provides for a purchased gas cost adjustment to reflect a reduction, of 3¢ to 41¢ per MMBtu in its cost of gas purchased for resale to certain of its customers, namely Michigan Power Company, Peoples Natural Gas Company, Inter-City Gas Corporation and ANR Pipeline Company as well as the surcharge rate filed for on March 31, 1986. These reductions result from the operation of indexing mechanisms in Great Lakes' gas purchase contracts with TransCanada Pipelines Limited which have been previously filed with the Commission in various filings by Great Lakes.

Great Lakes further states that due to an extremely heavy work load related to numerous discovery requests in its presently pending general rate increase application these reductions were inadvertently overlooked in Great Lakes' purchased gas cost surcharge filing of March 31, 1986 in Docket No. TA86-6-51-000,001. Therefore Great Lakes requests that Second Substitute Fifty-Eighth Revised Sheet No. 57 replace the similar tariff sheet filed on March 31, 1986 to be effective May 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 7, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10078 Filed 5-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-453-000]

Southern California Edison Co.; Filing

April 30, 1986

The filing company submits the following:

Take notice that, on April 29, 1986, Southern California Edison Company ("Edison") tendered for filing an agreement entitled "Edison-Salt River Project Interruptible Transmission Service Agreement", which has been executed by Edison and the Salt River Project Agricultural Improvement and Power District ("Salt River Project").

Under the terms and conditions of the Agreement, Edison will make available to Salt River Project interruptible transmission service from a specified point of receipt to specified point of delivery.

The Agreement is proposed to become effective when executed by the Parties and accepted for filing by the Commission.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the Salt River Project Agricultural Improvement and Power District.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 9, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10079 Filed 5-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-339-000]

Sugar Creek Producing Co.; Application for Limited-Term Abandonment

April 30, 1986.

Take notice that on April 17, 1986, as supplemented on April 25, 1986, Sugar Creek Producing Company (Applicant), One Texas Centre, 415 Texas Street, Suite 410, Post Office Box 1756, Shreveport, Louisiana 71166, filed in the above docket an application pursuant to section 7(b) of the Natural Gas Act, the Commission's Regulations thereunder and the Commission's declaration of policy in Order No. 436, for authorization to abandon for a limited term certain sales and its service obligations with respect thereto established under the small producer certificate of public convenience and necessity issued to Applicant in Docket No. CS77-382. Applicant states that it is subject to substantially reduced takes without payment.

Applicant states that it is an independent producer which sells natural gas to United Gas Pipe Line Company (United) pursuant to a sales contract dated April 1, 1982, which superseded a contract dated August 21, 1959. The term of the contract, according to Applicant, is for the life of the leases covered by the contract, and under the contract Applicant sells gas to United from the following described wells:

Well Name and NGPA Well Pricing Category

Averett No. 1—Section 108
Brown No. A–1—Section 108
Brownfield No. 1—Section 104
Hodges No. A–1—Section 104
Sims No. B–1—Section 104
Stevenson-Kilpatrick No. 1—Section 104
White No. 1—Section 108

These wells are located in Sugar Creek Field, Claiborne Parish, Louisiana.

Applicant states that United is taking only approximately 26 Mcf/d of the available deliverability of approximately 382 Mcf/d from the above-described wells which are covered by the contract. Accordingly, Applicant desires to abandon for a term of 2½ years its service and sales with respect to the gas produced from the above-described wells in order to enable Applicant to seek other markets for this gas.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to Section 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should, on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All 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 in the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–10080 Filed 5–5–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP80–97–005]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Tariff Revisions

April 29, 1986.

Take notice that on April 23, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing the following revised tariff sheets to its FERC Gas Tariff.

First Revised Volume No. 1

Second Substitute Original Sheet No. 394
Second Substitute Original Sheet No. 395
Second Substitute Original Sheet No. 396

Sixth Revised Volume No. 2

First Revised Sheet No. 299AAA
First Revised Sheet No. 299AAA1
First Revised Sheet No. 299AAA2
First Revised Sheet No. 299AAA3
First Revised Sheet No. 299AAA4
First Revised Sheet No. 299AAA5
First Revised Sheet No. 299AAA6
First Revised Sheet No. 299AAA7
First Revised Sheet No. 299AAA8
First Revised Sheet No. 299AAA9
First Revised Sheet No. 299AAA10
First Revised Sheet No. 299AAA11

These tariff sheets are proposed to be effective December 1, 1985. The purpose of the tariff sheets is to correct certain technical errors and omissions in Tennessee's April 7, 1986 tariff filing in this docket.

Tennessee states that Revised Sheet Nos. 394 through 396 in First Revised Volume No. 1 contain an effective date of December 1, 1985, instead of November 1, 1985, to reflect the fact that the rates and entitlements for Rate Schedules FSST–E and FSST–NE became effective on December 1, 1985. Tennessee asserts that these sheets also correct rounding errors in the entitlements for Rate Schedule CGT–NY and CGT–NE customers.

Tennessee states that Revised Sheet Nos. 299AAA through 299AAA11 in Sixth Revised Volume No. 2 constitute Rate Schedule T–130 with rates expressed on a dekatherm basis and with reduced service authorizations in accord with the Commission's order issued June 14, 1985 in Docket Nos. CP84–441, *et al.* Tennessee requests an effective date of December 1, 1985, consistent with the effective date of the reduced service authorizations.

Tennessee requests any waivers the Commission deems necessary in order to permit these tariff sheets to become effective as proposed. Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 385.214). All such motions or protests should be filed on or before May 7, 1986. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

FR Doc. 86–10081 Filed 5–5–86; 8:45am]

BILLING CODE 6717–01–M

[Docket Nos. ES86–38–000 et al.]

Edison Sault Electric Company et al.; Electric Rate and Corporate Regulation Filings

April 30, 1986.

Take notice that the following filings have been made with the Commission:

1. Edison Sault Power Company

[Docket No. ER86–38–000]

Take notice that on April 23, 1986, Edison Sault Electric Company (Applicant) filed an application seeking authority pursuant to section 204 of the Federal Power Act to issue up to $2,500,000 principal amount of short-term debt with final maturities of no later than December 31, 1986.

Comment date: May 22, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company.

[Docket No. ER86–425–000]

Take notice that, on April 25, 1986, Southern California Edison Company ("Edison") tendered for filing, as a supplement to the Integrated Operations Agreement ("IOA"), designated Rate Schedule FERC No. 94, the following agreement, which has been executed by Edison and the City of Riverside, California ("Riverside"): Supplemental Agreement for the Integration of Riverside's Entitlement in the Palo Verde Nuclear Generating Station.

The Supplemental Agreement provides for certain specific details relating to the integration of Riverside's entitlement to power from the Palo Verde Nuclear Generating Station as required by the IOA.

The Supplemental Agreement is proposed to become effective when executed by the Parties and accepted for filing by the Commission; and as such,

Edison requests, to the extent necessary, waiver of notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Riverside, California.

Comment date: May 13, 1986, in accordance with Standard Paragraph E at the end of this document.

3. Bangor Hydro-Electric Company

[Docket Nos. ER86-145-002 and ER86-144-002

Take notice that on April 21, 1986, Bangor-Hydro Electric Company tendered for filing an explanation of its deficiencies in its previous filing with respect to Part 35 of the Commission's Regulations.

Bangor Hydro states as follows:

Bangor Hydro has revised its energy charge as requested by FERC and filed an amended schedule on February 11, 1986.

Bangor Hydro did not prepare any cost of service studies for this rate. The maximum reservation charge is associated with Mystic #7 is a fossil fuel unit and typical of the type of unit being bought and sold in New England at this time.

Bangor Hydro does not currently have any similar rate schedule on file with FERC. However, it buys under this type of arrangements from Central Vermont Public Service Corporation (FERC Rate Schedules Nos. 127 and 129; Docket Nos. ER86-147-000 and ER86-148-000), Northeast Utilities (FERC Docket No. ER84-264-000) and the New Brunswick Electric Power Commission.

Bangor Hydro requires the customer of this rate to be an interconnected electric utility and is competing with other interconnected electric utilities to supply and sell capacity and energy. The utilities named in the above paragraph offer this similar service. Bangor's service compares favorably with similar services in availability, firmness, price and terms. Availability is directly associated with the ability of one or more units to provide power. This is firm power. The price is set on a competitive basis so that the buyer will request the service. Terms are substantially the same as the rate schedules mentioned above. Transmission limitations are not expected to affect the purchaser's alternatives. This is an economic transaction and alternatives are almost always available either on the purchaser's own system or from a competitor and the availability of these alternatives determines the negotiated price.

Comment date: May 12, 1986, in accordance with Standard paragraph E at the end of this notice.

4. The Kansas Power and Light Company and Midwest Energy, Inc.

[Docket No. ER86-422-000]

Take notice that the Kansas Power and Light Company and Midwest Energy, Inc., on April 24, 1986 tendered for filing proposed changes in its Federal Energy Regulatory Commission Electric Service Tariff No. 123.

Schedule H and Addendum No. 2 to Service Schedule K—Participation Power Service provides for the purchase of Participation Power by Midwest Energy, Inc. for the period June 1, 1986 through September 30, 1986 and minor contract wording changes.

Copies of the filing were served upon Kansas Corporation Commission.

Comment date: May 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Tampa Electric Company

[Docket No. ER86-423-000]

Take notice that on April 24, 1986, Tampa Electric Company (Tampa Electric) tendered for filing an Agreement for Interchange Service between Tampa Electric and the Florida Municipal Power Agency (FMPA). The Agreement was supplemented with Service Schedules A, B, C, J, and X, providing for emergency, scheduled, (short-term) economy, negotiated, and extended economy interchange service, respectively.

Tampa Electric proposes an effective date of May 1, 1986, and therefore requests waiver of the Commission's notive requirements.

Copies of the filing have been served on FMPA and the Florida Public Service Commission.

Comment date: May 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR 86-10075 Filed 5-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8833-001]

Enco Development Corp., Surrender of Preliminary Permit

April 25, 1986.

Take notice that Enco-Development Corporation, permittee for the Yaak Falls Hydropower Project No. 8833 has requested that its preliminary permit be terminated. The preliminary permit for Project No. 8833 was issued on July 19, 1985, and would have expired on December 30, 1986. The project would have been located on the Yaak River, within the Kootenai National Forest in Lincoln County, Montana.

The permittee filed the request on October 28, 1985, and the preliminary permit for Project No. 8833 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb

Secretary.

[FR Doc. 86-10073 Filed 5-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS68-40 et al.]

First City National Bank of Midland, Trustee (Midland National Bank, Trustee), et al.; Applications for Small Producer Certificates[1]

April 30, 1986.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a small producer certificate of public convience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with Commission and open to public inspection.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Any person desiring to be heard or to make protest with reference to said applications should on or before May 15, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211,385.214). 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS68-40	[1] 3-28-86	First City National Bank, of Midland, Trustee, (Midland National Bank, Trustee) P.O. Box 10966, Midland, TX 79702.
CS71-987-001	[2] 4-16-86	Westland Oil Development Corp. and Westland Oil & Gas Properties, Inc. (Westland Oil Development Corp.) P.O. Box 900, Montgomery, TX 77356.
CS72-177-000	[3] 4-21-86	Mark H. Adams, *et al.* (Mark H. Adams) P.O. Box 273, Wichita, KS 67201-0273.
CS72-235-001	[4] 4-21-84	Nelle Son De Regger Trust, *et al.* (Mrs. Nelle Son de Regger) P.O. Box 1179, Wichita, KS 67201.
CS74-320	[5] 3-28-86	Bellwether Exploration Co. (Bellwether, Ltd.) 600 Seventeenth Street, Suite 400-N Denver, CO 80202.
CS86-44-000	3-26-86	Border Company, a Partnership, 1083 Du Pont Building, Wilmington, DE 19898.
CS86-49-000	3-26-86	Virginia Storey Wilson, 1400 Tilden Street, Wichita Falls, TX 76309.
CS86-50-000	3-27-86	Western Gas Processors, Ltd., 10701 Melody Driva, Northglenn, CO 80234.
CS86-51-000	3-27-86	Asher Resources, *et al.* 909 N.E. Loop 410 Ste. 820, San Antonio, TX 78209.
CS86-53-000	4-2-86	Legacy Energy Corp. 7908 Wrenwood Blvd. Suite D, Baton Rouge, LA 70809.
CS86-55-000	4-7-86	Fell Oil & Gas Co., P.O. Box 9487, Tulsa, OK 74157.
CS86-57-000	4-22-86	Elinore U. Chase, P.O. Box 11274, Midland, TX 79702.
CS86-58-000	4-21-86	Sunland Oil Co. P.O. Drawer 1977, El Paso, TX 79950-1977.

[1] By letter dated March 25, 1986, Applicant requests that its small producer certificate be redesignated under the name of First City National Bank of Midland, Trustee.

[2] By letter dated April 14, 1986, Applicant requests that its small producer certificate be amended to include Westland Oil & Gas Properties, Inc.

[3] By letter dated February 26, 1986, as supplemented by letter dated April 17, 1986, Applicant requests that its certificate be amended to include Mark H. Adams, II, Mark H. Adams Estate, Lucille Hammerly, Jeanne E. Hibbs, Russell S. Howard, Jr., Helen G. Walton, Robert H. Walton, Helen L. Westfall, Charles A. Williams, Jr., and Wilbur McBride.

[4] By letter dated April 18, 1986, Applicant requests that its certificate include Nelle Son de Regger Trust; Martha Johnson; John F. Hamilton, Jr. 1985 Trust; John H. McCutchen; Robert N. McCutchen; James F. Corcoran; Mary Jane Morgan; Warren M. Sparks; Carl K. Welton; John Hesling; Mary Anne Hesling; Suzanne Robinson, Trustee of the Floribel Hamilton Trust; Jeanette C. Adams; and Rosemary Bowen Morcha.

[5] Letter dated March 25, 1986, reflecting change in name of certificate holder.

[FR Doc. 86-10074 Filed 5-5-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53077; FRL-2995-5]

Premanufacture Notices; Monthly Status Report for August 1985

Correction

In FR Doc. 86-6996, beginning on page 15374, in the issue of Wednesday, April 23, 1986, make the following corrections:

1. On page 15376, in Table I, in entry P 85-1368, the last column should read "Nov. 16, 1985".

2. Also on page 15376, the portion of Table II that appears on that page should read as follows:

II. 156 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH

PMN NO.	
P 85-1141	P 85-1163
P 85-1142	P 85-1164
P 85-1143	P 85-1165
P 85-1144	P 85-1166
P 85-1145	P 85-1167
P 85-1146	P 85-1168
P 85-1147	P 85-1169
P 85-1148	P 85-1170
P 85-1149	P 85-1171
P 85-1150	P 85-1172
P 85-1151	P 85-1173
P 85-1152	P 85-1174
P 85-1153	P 85-1175
P 85-1154	P 85-1176
P 85-1155	P 85-1177
P 85-1156	P 85-1178
P 85-1157	P 85-1179
P 85-1158	P 85-1180
P 85-1159	P 85-1181
P 85-1160	P 85-1182
P 85-1161	P 85-1183
P 85-1162	P 85-1184

BILLING CODE 1505-01-M

[OPTS-59218; FRL-3005-9]

Certain Chemicals Test Marketing Exemption Applications; Coates Circuit Products/USA et al.

Correction

In FR Doc. 86-8836, beginning on page 15685, in the issue of Friday, April 25, 1986, make the following correction:

On page 15686, first column, under "T86-37", first line, "May 2, 1986" should read "May 22, 1986".

BILLING CODE 1505-01-M

[FRL-3012-7]

M-44 Sodium Cyanide Capsules: Filing of Objections to Intent to Modify Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Filing of Objections and Notices of Intent to Participate in Hearing.

Notice is hereby given, pursuant to 40 CFR 164.8 issued under the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136 *et seq.*) that objections to all proposed modifications and notices of intent to participate in hearings were filed by interested persons in connection with the Administrator's March 11, 1986, Notice of Hearing and Notice of Intent to Modify the 1975 Order relating to M-44 sodium cyanide capsules, 51 **Federal Register** 9515 (March 16, 1986). These proceedings have been consolidated.

For further information, interested persons may refer to the dockets on file with the Hearing Clerk, U.S. Environmental Protection Agency (Mail Code A-110) Room 3708, Waterside Mall, 401 M Street, SW., Washington, DC 20460 [(202) 382-4865].

J.F. Greene,

Administrative Law Judge.

April 22, 1986.

[FR Doc. 86-10101 Filed 5-5-86;8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1586]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

April 28, 1986.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these

documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, D.C., or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 74 of the Commission's Rules and Regulations In Regard to the Instructional Television Fixed Service. (MM Docket No. 83–523).

Number of petitions received: 6.

Federal Communications Commission.

William J. Tricarico,

Secretary

[FR Doc. 86–10106 Filed 5–5–86; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 86–125]

Common Carrier Services; Interstate Access Charges; Order Designating Issues for Investigation

AGENCY: Federal Communications Commission.

ACTION: Order designating issues for investigation.

SUMMARY: The Common Carrier Bureau has adopted an Order designating for investigation issues concerning the reasonableness and accuracy of the interstate access charges that the local exchange carriers (LECs) and National Exchange Carrier Association (NECA) proposed on July 2, 1985, which became effective, subject to investigation, on September 30, 1985. The Bureau has tentatively concluded that NECA's Common Line rate and certain access rates of some LECs are too high, and that historical demand data submitted by the LECs and NECA are inconsistent. In order to make a final determination concerning the correct level of access charges, the Bureau requires that the LECs and NECA reconcile their demand data and provide updated information. To the extent that the LECs' and NECA's current rates are excessive, the Bureau proposes requiring refunds to customers of interstate access service.

FOR FURTHER INFORMATION CONTACT: Mark Uretsky, Public Utility Specialist, Common Carrier Bureau, (202) 632–6312.

SUPPLEMENTARY INFORMATION: This is a summary of the Common Carrier Bureau's Order Designating Investigation in CC Docket No. 86–125, Phase I, adopted April 4, 1986 and released April 14, 1986. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order Designating Issues for Investigation

(1) The Bureau presents tentative conclusions regarding the reasonableness of the interstate access rates filed on July 2, 1985 which generally became effective on October 1, 1985, proposes adjustments to those rates and solicits public comment so that, in a following Order, modifications of existing rates can be required as necessary. The Bureau tentatively concludes that many rates, including the currently effective carrier common line (CCL) rate, should be reduced. The Bureau's analysis of cost trends indicates that aggregate LEC test year costs are overstated by $295.157 million and should be adjusted downward by that amount. Of the $295.157 million, $213 million has already been reduced by the September 30 Order. Of this amount, $143.932 million represents an overstatement of common line costs; the remainder represents an overstatement of non-common line costs. This Order also considers the depreciation expenses projected by all Tier 1 companies (companies with over $100 million in revenues), and their projections of costs in three key accounts.

(2) *Cost Forecasts:* The Bureau analyzed the key accounts that are used by each Tier 1 operating company to develop the interstate revenue requirement, including Accounts 100.1, 171 and 608, and an amalgam of costs labeled "Expenses and Other Taxes less Depreciation." These were analyzed on a "subject to separations" (*i.e.* "unseparated") basis. The Bureau made necessary adjustments to these forecasts, and flowed them through to the interstate jurisdiction, and ultimately, to the relevant access elements.

(3) *Demand Forecasts:* The Bureau estimated both aggregate and disaggregate (individual company) Tier 1 demand, improving the method employed to estimate NECA's CCL demand in the *January 17 Order.* Because the Bureau's forecast of demand proved to be highly accurate, it decided to forecast directly aggregate and disaggregate demand for the test period on which the LECs' July 2 filing is based (*i.e.*, June 1, 1985 to May 31, 1986). The analysis of demand (usage) trends indicates that aggregate LEC test year billable minutes of use (MOU) is understated by 5.096 percent or 9,950,381 million MOU and should be adjusted upward by that amount. The Bureau tentatively concludes that the CCL rate should be revised to incorporate this adjustment, and that each LEC for which billable MOU adjustments are proposed should revise its line termination rate by incorporating the proposed billable MOU adjustment. Revisions based on billable MOU adjustments to other access rates are not required. Also, historical demand data provided by NECA and the LECs are seriously inconsistent, NECA's measure of historical usage being, on average, approximately 2.5 percent less than the sum of the LECs'. The Bureau requires that NECA and LEC views of historical demand be reconciled to the extent possible.

(4) *Effect of Demand Changes on ISFs:* Because interstate separations factors (ISFs) are essentially ratios of interstate usage to total company usage, there is, for certain traffic sensitive (TS) access elements, a very strong feedback effect between demand changes and changes in ISFs and, as a result, interstate costs. Therefore, the Bureau's adjustments to test year demand should flow through to test year ISFs, and no direct adjustments to TS ISFs are necessary. The feedback effect does not affect the Line Termination and Common Line rate elements, however, because these are not traffic sensitive. Therefore, the Bureau proposes that each LEC found to have understated test year demand recompute its Line Termination access rate using the Bureau's demand estimate. Further, the Bureau proposes that NECA adjust its estimate of test year billable MOU by 9,950,381,000 MOU (the estimated Tier 1 LECs' aggregate understatement of test year billable MOU) and employ that adjusted amount to recompute its CCL rate.

Refunds to Compensate for Delayed Effectiveness of Corrected Rates: If the Bureau later adopts its tentative conclusions that some rates are unreasonably high, it will require refunds to customers of interstate access service. The refunds should be calculated by multiplying the excess of the rates that are currently in effect over the rates that are found reasonable by the demand accumulated during the time the unreasonable rates were in effect. The amounts thus calculated should be refunded with interest to customers of interstate access service based on relevant measures of customer usage during the relevant time period.

(5) *Retrospective Monitoring of Forecast Data:* The Bureau will continue to review the LECs' operating statistics through forecasting and monitoring. The Order includes an analysis of June 1, 1984–May 31, 1985 test year forecasts made by NECA on October 17, 1984 and by the Bureau of January 17, 1984. Comparisons of the two projections show that NECA substantially underestimated test year demand and overestimated test year costs. The comparisons also show that in both instances, the Bureau's forecasts were more accurate, especially for demand. On the basis of this one example, however, the Bureau will not draw any conclusions concerning the quality or accuracy of NECA's forecasting process versus the Bureau's.

(6) *Deferred Rate Increases:* In its *September 30 Order*, the bureau identified a number of proposed switched and special access rate increases which proposed, without adequate explanation, to increase rates which already earned returns at or above the authorized rate of return. The concerned carriers agreed to defer their tariff changes for one month and to submit additional information. The Bureau ultimately allowed the proposed tariffs, as amended in some cases, to become effective without further suspension after deferrals of one or two months. This Order concludes that the additional information provided by the carriers offered plausiable explanations for the apparent anomalies. The decision to refrain from suspending these rates is not, however, a final determination with respect to the lawfulness of these rates. As part of their direct cases, each of the exchange carriers subject to the suspension or deferral of rates under the *September 30 Order* is directed to submit a report on actual earnings and operational results for the rates at issue. This report should show the actual rate of return for the service for the period since the rate change became effective and the information underlying this calculation. The carrier should also re-examine the factual claims presented in support of the rate increases and state the extent to which those factual claims have proved to be accurate.

(7) *Rate Issues Raised by Commenters:* After reviewing comments of numerous parties, the Bureau has reached the following tentative conclusions: Ohio Bell failed to rebut arguments that it seeks to recover the same expenses in both state and interstate rates. It should also recompute its Account 2296 expenses. Southwestern Bell and Pacific Bell should not include in their revenue requirements expenses related to intrastate operator takeback without additional cost support. Southwestern Bell used an improperly long lead-lag period in calculating working capital. Michigan Bell used an improperly high uncollectibles ratio in calculating uncollectible revenues. Bell Atlantic should exclude from its revenue requirement presubription expenses incurred prior to June 1, 1985. New York Telephone and C&P (D.C.) improperly included gross receipts taxes in their revenue requirements. Contel and United should submit additional information regarding Central Office Equipment and Outside Plant investments. NECA ahould submit additional information regarding the independent telephone companies' CPE revenue requirement. GTE California and Florida should recompute subscriber plant factor. GTE Florida and Illinois should submit additional information regarding use of five and seven day traffic studies.

(8) *Procedural Requirements:* The Bureau's view that certain access tariff rates are unreasonable is not final. Carriers and other commenters are invited to present evidence and comments relevant to this issue. The fundamental issue which the comments should address is whether the Bureau's analytical approach establishes adequate grounds for the initial conclusion that certain of the access rates are or will be unreasonable, and that the revisions proposed in the Order would be reasonable. The Bureau encourages comments suggesting improvements in its method, but notes that the fact that this method might be improved is not grounds for rejecting its use, so long as it is reasonable and produces reasonable results.

(9) By a recent Order (Revisions of Part 69 of the Commission's Rules and Regulations, CC Docket No. 85–385, FCC 86–70, released Feb. 6, 1986), carriers are not now required to revise the underlying support for their rates until the next annual access filing, to be effective January 1, 1987. *See also* Midyear 1986 Access Tariff Filings, Memorandum Opinion and Order, Mimeo No. 3414, released Mar. 26, 1986, at para. 2. Although carriers are scheduled to revise their rates to reflect other access rule changes effective June 1, 1986, these revisions can be made based on the July 2, 1985 data. Comments should address the reasonableness of using the tentative conclusions presented in this Order concerning the accuracy of the cost and demand data submitted in support of the July 2 rates as a benchmark for evaluating the rates scheduled to be effective June 1.

(1) In order to refine its forecasts, the Bureau requires some additional data, consisting primarily of data for the third and fourth quarters of 1985. Certain other information from Tier 1 companies is also required. The Industry Task Force is requested to organize the provision of this information. Additional information requested in the discussion of Rate Issues Raised By Commenters should be provided directly by the LECs in question by inclusion in their Direct Cases.

(11) LECs will have an opportunity to comment on the Bureau's analytical methods and tentative conclusions when they submit their Direct Cases, and interested parties may include such comments in their Oppositions. Filing parties are requested to comply with the following format in their filings. Filing parties should use the outline embodied in the Order's Table of Contents as headings for the various sections of their filings. Formal submissions should include the title and docket number of the proceeding in the heading, and reference the specific tariff or tariffs to which the pleading is directed (if appropriate). For example:

In the Matter of	CC Docket No. 86–125, Phase I
Annual 1985 Access Tariffs Filings Tariff F.C.C. No(s). XXX	Transmittal No(s). XXX

(12) The investigation in this docket will be conducted as a notice and comment proceeding. The initial round of filings by the LECs and NECA should be captioned "Direct Cases." The pleadings opposing the direct cases should be captioned "Opposition to Direct Cases" or "Comments on Direct Case," not as petitions to suspend or reject, and the LECs' and NECA's rebuttals to the oppositions and comments must be captioned "Rebuttals." Direct cases should be submitted on May 15, 1986; oppositions and comments should be submitted on June 5, 1986; and rebuttals should be submitted on June 16, 1986.

(13) This is a non-restricted notice and comment proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

(14) Therefore, it is ordered that the above mentioned carries comply with the information requirements as described in the text of this Order.

(15) It is further ordered that all mandatory and voluntary submissions be filed in accordance with the deadline established in paragraph 101 and the pleading cycle established in paragraph 104 above.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-9859 Filed 5-5-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 86-17]

Mobil Oil Corp. v. Barber Blue Sea Lines; Filing of Complaint and Assignment

Notice is given that a complaint filed by Mobil Oil Corp. (Mobil) against Barber Blue Sea Lines (Barber) was served May 1, 1986. Mobil alleges that Barber has violated section 10(b)(1), Shipping Act of 1984, through the application of an improper rate.

This proceeding has been assigned to Administrative Law Judge Seymour Glanzer. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by May 1, 1987, and the final decision of the Commission shall be issued by September 1, 1987.

John Robert Ewers,

Secretary.

[FR Doc. 86-10113 Filed 5-5-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Summit Bancorporation et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the office of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 29, 1986.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Summit Bancorporation,* Summit, New Jersey; to acquire 100 percent of the voting shares of The Trust Company of Princeton, Princeton, New Jersey, a *de novo* bank.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *One Valley Bancorp of West Virginia, Inc.,* Charleston, West Virginia; to acquire 100 percent of the voting shares of Financial Management Bancshares of West Virginia, Inc., Morgantown, West Virginia, and thereby indirectly acquire Farmers' and Merchants' Bank, Morgantown, West Virginia and the First National Bank of Terra Alta, Terra Alta, West Virginia.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Parker Bank Holding Company,* Muncie, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Parker Banking Company, Parker City, Indiana.

Board of Governors of the Federal Reserve System, April 30, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10068 Filed 5-5-86; 8:45 am]

BILLING CODE 6210-01-M

First Jersey National Corporation et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 1986.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *First Jersey National Corporation,* Jersey City, New Jersey; to engage directly in making, acquiring and/or servicing loans for itself or for others of the type made by a consumer finance company or a commercial finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

11. *Toledo Trustcorp, Inc.*, Toledo, Ohio; to engage *de novo* through its subsidiary Trustcorp of Florida National Association, Naples, Florida, in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y. Comments on this application must be received not later than May 21, 1986.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Moore Financial Group Incorporated*, Boise, Idaho; to engage *de novo* through its subsidiary Moore Financial Services, Incorportated, Boise, Idaho, in making and servicing commercial and mortgage loans, and leasing personal or real property pursuant to § 225.25(b) (1) and (5) of the Board's Regulation Y.

2. *Midland Bank plc*, London, England, Midland California Holdings Limited, London, England, and Midland America Corporation, San Francisco, California, to engage *de novo* in underwriting and dealing in United States government securities through Midland-Montagu Government Securities, Inc., San Francisco, California, and in underwriting and dealing in general obligations of states and political subdivisions through Midland-Montagu Securities, Inc., San Francisco, California, pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 1, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10126 Filed 5-5-86; 8:45 am]

BILLING CODE 6210-01-M

Guaranty Bancshares Corporation et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 29, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Guaranty Bancshares Corporation*, Shamokin, Pennsylvania; to acquire 100 percent of the voting shares of First National Bank of Nicholson, Nicholson, Pennsylvania.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Independent Community Banc Corp.*, Norwalk, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens National Bank of Norwalk, Norwalk, Ohio.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Bank of Indiantown Holding Co.*, Indiantown, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Indiantown, Indiantown, Florida.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Tyronza Bancshares*, Tyronza, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Tyronza Bank, Tyronza, Arkansas.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Harry A. Lowe Agency, Inc.*, Ouray, Colorado; to acquire 97.3 percent of the voting shares of Montrose County Bank Naturita, Colorado.

Board of Governors of the Federal Reserve System, May 1, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10127 Filed 5-5-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grants for Health Programs for Refugees, Availability of Funds for Fiscal Year 1986

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1986 for Project Grants for Health Programs for Refugees.

This grant program is authorized by section 412(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1522(b)(5)), as amended by the Refugee Act of 1980, Pub. L. 96-212; the Refuge Amendments of 1982, Pub. L. 97-363; and the Further continuing Appropriations for Fiscal Year 1985, Pub. L. 98-473. The Catalog of Federal Domestic Assistance Number is 13.987.

Eligible applicants are the official State helath agencies and, in certain situations, health agencies of political subdivisions of a State. Direct grants to health agencies of political subdivisions will be considered for funding only in special situations which are clearly justified and after consultation with the official State health agency, the CDC Health Program for Refugees, and the Regional Health Administrator, Public Health Service, of the appropriate Department of Health and Human Services Regional Office. States are expected to work with agencies and organizations in localities with significant refugee populations to identify their health needs and to develop programs to meet these needs.

The purpose of the program is to augment State and local resources in providing public health and general health assessments for refugees newly arrived in the United States. The term "refugee" is defined in section 101(a)(42) of the INA (8 U.S.C. 1101(a)(42)). Individuals classified as refugees are eligible for services under this program, except certain refugees whose medical care and other resettlement needs are provided through a special matching grant program administered by the Office of Refugee Resettlement under section 412(c) of the INA (8 U.S.C. 1522(c)).

Approximately $5,489,000 is available to award up to 6 new and approximately 46 continuation grants with the average award expected to be $105,000, ranging from $6,000 to $1,600,000. Grants are usually funded for 12 months in a 2- to 5-year project period. Funding estimates outlined above may vary and are subject to change.

Priority for funding initial grants or applications for a new project period will be placed on: (1) The extent of unmet public health needs associated with refugees; and (2) the need for general health assessments for refugees, with particular attention given to the identification of health problems which might affect employability, the referral of refugees for appropriate diagnostic and treatment services, and the identification of funding sources for needed services. Continuation awards within the project period are made on the basis of satisfactory progress in meeting project objectives and on the availability of funds.

The initial application for a new project period will be reviewed and evaluated on the basis of:

(1) Evidence of an assessment of the relationship of the proposed project to existing services.

(2) The size of the refugee population, including secondary migrants.

(3) The extent of unmet public health problems among refugees.

(4) The need for general health assessments for refugees.

(5) The ability of the applicant to deliver and coordinate the delivery of needed services, particularly in those areas with high concentration of refugees needing intensified outreach and followup services for tuberculosis preventive therapy, including referrals and financing arrangements.

(6) Consistency with the State's comprehensive refugee resettlement plan.

(7) Current performance and ability to maintain program momentum.

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. Information on application and review procedures, deadlines, the consequences of late submission, and other materials may be obtained from the appropriate Department of Health and Human Services Regional Office as set forth below.

Dated: April 29, 1986.

William E. Muldoon,

Director, Office of Program Support Centers for Disease Control.

Department of Health and Human Services (HHS) Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzgerald Kennedy Building, Boston, Massachusetts 02203, (617) 223–6827

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York 10278, (212) 264–2561

Regional Health Administrator, PHS, HHS Region III, Gateway Building #1, 3521–35 Market Street, Mailing Address: P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596–6637

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Tower, Suite 1007, Atlanta, Georgia 30323, (404) 221–2316

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60606, (312) 353–1385

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767–3879

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374–3291

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 Stout Street, Denver, Colorado 80294, (303) 844–6163

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–5810

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, M.S. 402, Seattle, Washington 98121, (206) 442–0430

[FR Doc. 86–10067 Filed 5–5–86; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

Correction

In FR Doc. 86–8537 beginning on page 13097 in the issue of Thursday, April 17, 1986, make the following correction: On page 13098, in the second column, in the third complete paragraph, in the ninth line "95–409" should read "94–409".

BILLING CODE 1505–01–M

National Institutes of Health

Advisory Committee to the Director, NIH; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Advisory Committee to the Director, NIH, on June 9–10, 1986, at the National Institutes of Health, Bethesda, Maryland 20892. The meeting will take place from 9:00 a.m. to 5:30 p.m. on June 9, and from 9:00 to approximately 11:45 a.m. on June 10, in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The meeting will be devoted to discussions of "The Impact of Cost Containment Measures on Clinical Research and Research Training in Academic Health Centers."

The Executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892, (301) 496–3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information.

Dated: April 28, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–10115 Filed 5–5–86; 8:45 am]

BILLING CODE 4140–01–M

Consensus Development Conference on the Utility of Therapeutic Plasmapheresis for Neurological Disorders; Meeting

Notice is hereby given of the NIH Consensus Development Conference on "The Utility of Therapeutic Plasmapheresis for Neurological Disorders," sponsored by the National Institute of Neurological and Communicative Disorders and Stroke, the Warren Grant Magnuson Clinical Center, and the Office of Medical Applications of Research, NIH. The conference will be held June 2–4, 1986, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Plasmapheresis (or plasma exchange), a technique for removing substances from the blood that may cause or promote disease, has been used for a wide variety of neurological illnesses, but proper indications and the risk-benefit ratio have been uncertain. A conference to develop consensus on these and other issues concerning plasmapheresis is timely since evidence about the therapy's efficacy, which until recently was only anecdotal, has been expanded by a number of controlled studies.

Participants at the two-and-a-half day conference will review and evaluate information on the efficacy of plasmapheresis as a treatment for neurological disorders. Illnesses that will be discussed include myasthenia gravis, Eaton-Lambert syndrome, Guillain-Barre syndrome, chronic inflammatory neuropathy, paraproteinemic neuropathies, amyotophic lateral sclerosis, and multiple sclerosis.

Conference participants will include research scientists and physicians, other health care practitioners, and members

of voluntary health organizations concerned with neurological disease. Following two days of presentations by medical experts and discussion by the audience, a consensus panel, drawn from the medical and lay communities, will formulate a draft statement responding to the following key questions:

- Is therapeutic plasmapheresis of benefit for neurological disease? if so, for which diseases and under what circumstances?
- What are the risks of plasmapheresis?
- If effective, what are the mechanisms of action?
- Is efficacy influenced by technique?
- What is the relationship of plasmapheresis to other therapies?
- What insights has plasmapheresis provided to suggest relevant clinical or basic strategies?

Evidence relating to the utility of therapeutic plasmapheresis for neurological disorders will be presented by experts in the field and evaluated by a panel composed of representatives from neurology, blood banking, immunology, biostatistics, and the public. Presentations will continue until 5 p.m. Monday, June 2, and until noon on Tuesday, June 3. The information presented will be discussed by the panel and there will be opportunity for questions and comments from the audience.

On the third and final day of the conference, Consensus Panel Chairman Dr. Barry Arnason, Professor and Chairman of the Department of Neurology, University of Chicago, Pritzker School of Medicine, will read to the audience the draft consensus statement summarizing the scientific issues raised and the conclusions drawn by the panel. A press conference will follow open discussion of the consensus statement.

Information on the program may be obtained from Ms. Nancy Cowan, Prospect Associates, 2115 East Jefferson Street, Suite 401, Rockville, Maryland 20852; telephone (301) 468–6555.

Dated: April 28, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–10117 Filed 5–5–86; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee sponsored by the National Heart, Lung, and Blood Institute, on May 29, 1986, 8:30 a.m. to 3:30 p.m., Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20850, 301–468–1100.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. James I. Cleeman, Coordinator, National Cholesterol Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A18, Bethesda, Maryland 20892, 301–496–1051.

Dated: April 28, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–10116 Filed 5–5–86; 8:45 am]

BILLING CODE 4140–01

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, June 13, 1986. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, Building 31, Conference Room 7, C-Wing. The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A–21, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, (301) 496–6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: April 28, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–10118 Filed 5–5–86; 8:45 am]

BILLING CODE 4140–01

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Pilot Study of Commercial Rafting on the Wild & Scenic Section of the North Fork of the American River

AGENCY: Bureau of Land Management, Interior.

ACTION: A Pilot Study Based on a Scoping Paper, to Determine the Feasibility of Commercial Rafting on the Wild & Scenic Section of the North Fork of the American River.

SUMMARY: The Bureau of Land Management, Folsom Resource Area and Tahoe National Forest are considering a study to determine the feasibility of providing commercial whitewater rafting opportunities on the North Fork of the American River between Euchure Bar and Iowa Hill Bridge.

The pilot study is needed to determine what level, if any, of commercial activity will satisfy the public needs and still be commensurate with maintaining those values which made it possible for the North Fork of the American River to be included in the Wild and Scenic System.

The study will begin in May of 1986 and could last up to three years. Upon completion of the study, the Bureau of Land Management, Folsom Resource Area, and the Tahoe National Forest will prepare an Environmental Analysis to analyze the various alternatives.

The scoping paper that was developed by the BLM and FS identified the critical issues and concerns and provides the direction for the pilot study. A copy of this scoping paper may be obtained from the Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630.

The following seven outfitters have been accepted by the Bureau of Land Management, Folsom Resource Area and Tahoe National Forest to conduct the pilot study in 1986.

Whitewater Mailing List

Mr. Dan Buckley, III, Tributory Whitewater, 55 Sutter St., Suite 65, San Francisco, CA 94104

Mr. Mark Helmus, Wild Water West, 2 Virginia Gardens, Berkeley, CA 94702

Mr. Monte Osborn, A.B.L.E., Rafting Co., 4965 Little Road, Coloma, CA 95613

Mr. Bob DeVisscher, River Rat & Company, Inc. 9840 Fair Oaks Blvd., Fair Oaks, CA 95628

Mr. William McGinnis, Whitewater Voyages, P.O. Box 906, El Sobrante, CA 94803–0906

Mr. Jon Osgood, Libra Expeditions, 11017 Sevenhills Dr., Tujunga, CA 91042

Mr. John Vail, Outdoors Unlimited River Trips, Box 22513, Sacramento, CA 95811

ADDRESS: Comments and suggestions should be sent to: Area Manager, Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

Deane K. Swickard,

Area Manager.

[FR Doc. 86-10054 Filed 5-5-86; 8:45 am]

BILLING CODE 4310-84-M

Filing of Plat of Survey; New Mexico

April 29, 1986.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on April 29, 1986.

A survey of the west and north boundaries and subdivisional lines of T. 26 N., Rs. 15 and 16 W. under Group 812, accepted April 16, 1986.

This survey was requested by the Bureau of Indian Affairs, Navajo Area Office, Window Rock, Arizona.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Kelley R. Williamson, Jr.,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 86-10053 Filed 5-5-86; 8:45 am]

BILLING CODE 4310-FB-M

Temporary Closure of Certain Public Lands in the Las Vegas District to Off Road Vehicle Use

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Temporary closure of certain Public Lands in the Las Vegas District, Clark County, Nevada, on and adjacent to the Mint 400 ORV race course, on May 10 and 11, 1986. Access will be limited to race officials, entrants, law enforcement, BLM emergency personnel licensees, permittees and right-of-way grantees and other authorized personnel as designated during the period of the closure.

SUPPLEMENTARY INFORMATION: Certain public lands in the Las Vegas District, Clark Count, Nevada will be temporary closed to public access from 00:01 hours May 10, 1986 through 06:00 hours May 11, 1986 to protect persons, property, and public lands and resources on and adjacent to the 1986 Mint 400 ORV race course. This temporary closure is made pursuant to 43 CFR 8364.

The public lands to be closed are those lands adjacent to and roads, trails, and washes identifed as the 1986 Mint 400 ORV race course and certain lands adjacent to the course within the southern Eldorado Valley area, further described as: T.25S, R.62E., all of section 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36.

A map showing specific areas closed to public access is available from the Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada, 89126 (702) 388-6403 and the Stateline Resource Area Office, P.O. Box 7384, Las Vegas, Nevada (702) 388-6627. Any person who fails to comply with this closure order issued under 43 CFR 8364 may be subject to the penalties provided in 43 CFR 8360.0-7.

Ben F. Collins,

District Manager, Las Vegas District.

[FR Doc. 86-10052 Filed 5-5-86; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 26, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 21, 1986.

Carol D. Shull,

Chief of Registration, National Register.

Alabama

Escambia County

Flomation, *Commercial Hotel-Hart Hotel*, 120 Palafox St.

Montgomery County

Montgomery, *Sheperd Building*, 312 Montgomery St.

Talladega County

Talledega, *Lawler—Whiting House*, AL 21, S. of Talladega

Arizona

Coconino County

Flaggstaff, *Northern Arizona Normal School Historic District*, Northern Arizona University on US 89

Navajo County

Homolovi Four (IV)

Colorado

Boulder County

Allenspark, *Bunce School*, CO 7, S. of Allenspark

Boulder, *Northern Colorado Power Company Substation*, 1590 Broadway

Kit Carson County

Burlington, *Winegar Building*, 494—498 14th St.

Pueblo County

Pueblo, *McCarthy, T.G., House*, 917 N. Grand Ave.

Florida

Collier County

Burns Lake Site (8 CR259)

Plaza Site (8 CR303)

Georgia

Bibb County

Macon, *Pleasant Hill Historic District*, Roughly bounded by Neal & Sheridan Aves., Schofield, Madison & Jefferson Sts., First Ave., Ferguson, Holts Lane, and Galliard St.

Iowa

Story County

Story City, *Herschel—Spillman Two-Row Portable Menagerie Carousel*, North Park, Story St., and Grove Ave.

Maryland

Frederick County

Sabillasville, *Cullen, Victor, School Power House*, MD 81

Kent County

Kennedyville vicinity, *Shrewsbury Church*, Shrewsbury Lane

Massachusetts

Norfolk County

Milton, *United States Post Office—Milton Main*, 499 Adams St.

New York

Madison County

Lenox, *Roberts, Judge Nathan S., House (Canastota Village MRA)*, W. Seneca Ave.

New York County

New York, *Hopper, Isaac T., Home*, 110 Second Ave.

Onondoga County

Delphi Falls, *Delphi Village School*, East Rd.

Ohio

Cuyahoga County

Cleveland, *Woodland Cemetery*, 6901 Woodland Ave.

Portage County

Aurora, *Aurora Train Station*, 13 New Hudson Rd.

Tennessee

Maury County

Culleoka, *Culleoka Methodist Episcopal Church South*, Quality St.

Texas

Bexar County

San Antonio, *Franklin, Thomas H., House*, 105 E. French Pl.

Virginia

Accomack County

Assawoman, *Arbuckle Place*, Seaside Rd, VA 679

Wisconsin

Winnebago County

Oshkosh, *Washington Avenue Historic District*, Roughly bounded by Merritt Ave., Linde and Lampert Sts., Washington Ave., Bowen, and Evans Sts.

[FR Doc. 86-10140 Filed 5-5-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30809]

Gary W. Flanders—Exemption—Continuance of Control

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 11343, *et seq.* the continuance of control by Gary W. Flanders of two Class III non-connecting carriers, the Fore River Railway Company and the Colorado and Eastern Railroad Company, subject to standard labor protective conditions.

DATES: This decision is effective on May 10, 1986. Petitions to reopen must be filed by May 26, 1986.

ADDRESSES: Send petition referring to Finance Docket No. 30809 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Joseph H. Dettmar, 1000 Potomac Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Addition information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call 289-4357 (DC Metropolitan Area) or toll free (800) 424-5403.

Decided: April 29, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary

[FR Doc. 86-10085 Filed 5-5-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30799]

Gloster Southern Railroad Co., and Georgia-Pacific Corp., Exemption; 49 U.S.C. 11343 and 11322

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the requirements of 49 U.S.C. 11343 the continuation of control of Gloster Southern Railroad Company (GSR) by Georgia-Pacific Corporation, subject to employee protective conditions in New York Dock Ry. Co.-Control-Brooklyn East. Dist., 360 I.C.C. 60 (1979).

DATES: This exemption is effective May 5, 1986. Petitions to reopen must be filed by May 27, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30799 to:

(1) Office of the Secretary Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representative: David H. Baker, Suite 400, 888 17th Street, NW., Washington, DC 20006

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: A Notice of Exemption for GSR's operation of the line is directly-related Finance Docket No. 30799 (Sub-No. 1) was published March 28, 1986 at 51 FR 10680.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to TS InfoSystems, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: April 16, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86-10086 Filed 5-5-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55; (Sub-163X)]

Seaboard System Railroad, Inc.; Exemption; Abandonment in Bell County, KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission Seaboard System Railroad, Inc. (SBD), from the requirements of 49 U.S.C. 10903 *et seq.*, to abandon its 2.16-mile line of railroad from milepost WE-213.61 at Amru to the end of SBD's ownership at milepost WE-215.77 in Bell County, KY, subject to standard employee protection conditions.

DATES: This exemption is effective May 6, 1986. Petitions to reopen must be filed by May 27, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 163X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representative: Charles M. Rosenberger, 500, Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to TS InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: April 25, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86-10087 Filed 5-5-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-57 (Sub-15X)]

Soo Line Railroad Co; Abandonment Exemption; in Hennepin County, MN

AGENCY: Interstate Commerce Commission.

ACTION: Notice Commerce Commission.

SUMMARY: Soo Line Railroad Company filed a petition seeking an exemption under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon its 0.58-mile line of railroad in Minneapolis, Hennepin County, MN. The Commission has determined that there should be notice and comment

because the impact of the proposed abandonment cannot be fully ascertained form the present record.

DATE: Comments must be filed with the Commission and served on petitioner's representative by June 5, 1986. Replies to the comments must be filed by June 25, 1986.

ADDRESSES: Send an original and 10 copies of comments referring to Docket No. AB–57 (Sub-No. 15X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative (1 copy): Charles H. Clay, 2110 First Bank Place West, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Louis E. Citomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area), or toll-free (800) 424–5403.

Decide: April 25, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Chairman Gradison and Commissioner Andre would have granted the exemption.

James H. Bayne,

Secretary

[FR Doc. 86–10088 Filed 5–5–86; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-178 (Sub-No. 3)]

Investigation into Motor Carrier Insurance Rates—Conference of Interested Parties

AGENCY: Interstate Commerce Commission.

ACTION: Institution of proceeding.

SUMMARY: The Commission is instituting a proceeding to provide a forum for discussion by interested and affected parties of insurance-related problems in the motor carrier industry. We anticipate that this conference will contribute to a more thorough understanding of: (1) the nature and extent of the insurance crisis confronting motor carriers, (2) the various factors contributing to the prevailing conditions, and (3) administrative and/or legislative actions that may help alleviate the problems.

DATES: Notice of Intent to Participate should be filed by May 20, 1986. A docket management conference is scheduled for May 30, 1986.

ADDRESS: Direct notices and related correspondence to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

Pleadings should refer to: Conference—Ex Parte No. MC–178 (Sub-No. 3).

FOR FURTHER INFORMATION CONTACT: Mary Kelly, Chief of Staff, Office of Commissioner Lamboley (202) 275–7419.

SUPPLEMENTARY INFORMATION: In response to a petition filed by the American Trucking Associations, Inc. (ATA), the Commission instituted a proceeding in Ex Parte No. MC–178, *Investigation into Motor Carrier Insurance Rates* (not printed), served October 31, 1985, and issued a supplemental decision and notice concerning self-insurance (not printed), served April 22, 1986. The initial notice invited comments concerning: (1) The extent of bodily injury and property damage (BI&PD) insurance problems facing the motor carrier industry; (2) the causes of these problems; and (3) what action, if any, the Commission could take to alleviate the problems. Comments relating to these matters were introduced by 75 parties, including motor property and passenger carriers, their representatives and trade associations, independent trucking interests, shippers and shipper associations, and insurance industry representatives.

By motion filed February 11, 1986, ATA requests that the Commission appoint a hearing officer for purposes of holding a conference of interested parties in this proceeding pursuant to 49 CFR 1110.4. Statements in support of ATA's motion were filed by the United Bus Owners of America, the Movers' and Warehousemen's Association of America, the National Industrial Transportation League, and jointly by the National Small Shipments Traffic Conference, Inc. and the Drug and Toliet Preparation Traffic Conference, Inc.

The initial comments filed in this proceeding indicate that the insurance problem is attributable to a range of factors. An informal conference of interested parties conducted before a Commission official could be useful in promoting full and frank discussions among the affected groups. Accordingly, pursuant to 49 U.S.C. 10321 and 10311, and 49 CFR 1110.4, we are instituting such a proceeding. Our purpose in taking this action is consistent with that announced in our prior decision inviting written comments: to collect and analyze, with the assistance of those parties most directly affected, information concerning the extent, causes, and recommended solutions to problems affecting the cost and availability of motor carrier BI&PD insurance.

A docket management conference is set for 10:00 a.m. on May 30, 1986, in Hearing Room C of the Interstate Commerce Commission Building, Washington, D.C., before the Honorable Paul H. Lamboley, Commissioner. Under the supervision of Commissioner Lamboley, common interest conference groups may be formed, if useful, to focus on specific areas material to the situation.

In advance of the docket management conference, parties should meet, where practical, to discuss organizational and topical agenda suggestions, and submit ideas to the Commissioner no later than 2 days before the conference date. An agenda for the docket management conference will be available from the Commission's Office of Legislative and Public Affairs at noon on the day before the conference.

At the conference, parties should be prepared to discuss the most effective means of using this forum to ameliorate or eliminate the insurance crisis in the motor carrier industry. They also should be prepared to discuss and offer suggestions towards developing the most practicable, effective, and administratively feasible course of Commission action to assist carriers in resolving the insurance crisis consistent with our statutory responsibilities to promote safe operations.

The record, including findings and recommendations developed in the conference group, shall be certified by Commissioner Lamboley to the Commission.

This decision will not significantly affect the quality of the human environment or conservation of energy resources and will not have an adverse impact on small business.

Authority: 49 U.S.C. 10321 and 10311.

It is Ordered

1. A proceeding is instituted to provde a forum for discussion of motor carrier liability insurance issues, with a view toward developing recommendations for Commission action to alleviate insurance cost and availability problems.

2. A docket management conference on this subject will be held before the Honorable Paul H. Lamboley, Commissioner, in Hearing Room C of the Interstate Commerce Commission Building in Washington, D.C., at 10:00 a.m. on May 30, 1986,

3. After the initial docket management conference, a service list shall be established and served to permit notice to all interested parties. Copies of all materials filed with the Commission in this proceeding must be served on all parties on that list.

4. This notice will be published in both the *ICC* and **Federal Register.**

Decided: April 24, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Andre would have assigned the conference to one of the Commission's professional hearing officers. Chairman Gradison dissented with a separate expression.

James H. Bayne,

Secretary.

Chairman Gradison, dissenting:

I am opposed to further expansion of the Commission's involvement in this area of limited ICC jurisdiction. I view the conference as needless duplication of our existing rulemaking in Ex Parte No. MC–178, *Investigation Into Motor Carrier Insurance Rates.*

[FR Doc. 86–10184 Filed 5–5–86; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 463]

Railroad Revenue Adequacy—1984 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of 1984 determination of rail revenue adequacy.

SUMMARY: Applying the return on investment/cost of capital formula adopted in *Standards for Railroad Revenue Adequacy,* 364 I.C.C. 803 (1981) and its previous determination that the cost of capital for 1984 was 15.78 percent, the Commission finds that none of the 31 Class I railroads in the nation met that test of revenue adequacy in 1984. However, the Commission also explains that the findings produced by the calculations performed in accordance with its existing procedures do not appear to produce a realistic picture of the state of the rail industry. Because the agency is not sure of the reason for this anomaly, it announces its intent to promptly issue a broad notice reopening Ex Parte No. 393 in order to re-evalute the manner in which it measures and determines revenue adequacy, including its use of the current cost of capital as the sole standard for revenue adequacy. In the interim, it will continue to apply the revenue adequacy determination made under the current methodology for purposes of establishing eligiblity for However, it will not necessarily treat the finding made under the current methodology as determinative of a revenue adequacy issue raised in individual rate reasonableness proceedings conducted under 49 U.S.C. 10701a. Rather, it will consider all probative evidence submitted in such cases pertaining to the revenue adequacy of the particular carrier involved.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489.

SUPPLEMENTARY INFORMATION: To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423; or call 289–4357 (D.C. Metropolitan area) or toll free 800–424–5403.

Authority: (49 U.S.C. 10704(a)).

Decided: May 1, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Chairman Gradison concurred with a separate expression. Commissioner Andre concurred in part and dissented in part with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 86–10183 Filed 5–5–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 8–86]

Privacy Act of 1974; New System of Records; Privacy Act Extract Program

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice proposes to establish a new system of records to be maintained by the Executive Office for Immigration Review (EOIR).

The Records and Management Information System (JUSTICE/EOIR–001) is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a (e)(4) and (11) has been published in the **Federal Register.** The new system will contain records and information which are relevant to administrative immigration proceedings for aliens, alleged aliens and aliens lawfully admitted for permanent residence.

In the Proposed Rules Section of today's **Federal Register,** the Executive Office for Immigration Review proposes to exempt the system from 5 U.S.C. 552a(d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(2).

5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the routine uses of this system; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system. However, a waiver of the 60-day requirement has been requested of OMB. Therefore, please submit any comments by June 5, 1986. The public, OMB, and the Congress are invited to submit comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 9002, 601 D Street, NW., Washington, D.C. 20530.

A report of the proposed system has been provided to the Director, OMB, the President of the Senate, and the Speaker of the House of Representatives.

Dated: April 24, 1986.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

JUSTICE/EOIR–001

SYSTEM NAME:

Records and Management Information System (JUSTICE/EOIR–001).

SYSTEM LOCATION:

Executive Office for Immigration Review, Department of Justice, 5201 Leesburg Pike, Suite 1501, Falls Church, Virginia 22041. The system is also located in EOIR field offices (see appendix identified as JUSTICE/EOIR–999)

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains case-related information pertaining to aliens and alleged aliens brought into the immigration hearing process, including certain aliens previously or subsequently admitted for lawful permanent residence.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes the name, file number, address and nationality of aliens and alleged aliens, decision memoranda, investigatory reports and materials compiled for the purpose of enforcing immigration laws, exhibits, transcripts, and other case-related papers concerning aliens, alleged aliens or lawful permanent residents brought into the administrative adjudication process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority granted the Attorney General pursuant to 44 U.S.C. 3101 and 3103 and to fulfill the legislative mandate under 8 U.S.C. 1103,

1226 and 1252. Such authority has been delegated to EOIR by 8 CFR Part 3.

PURPOSE OF THE SYSTEM:

Information in this system serves as the official record of immigration proceedings. EOIR employees use the information to prepare, process and track the proceedings. The information is further used to generate statistical reports and various documents, i.e., hearing calendars and administrative orders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disseminated to the Department of State; Federal courts; Members of Congress; the alien or alleged alien's representative or attorney of record; and, to Federal, State and local agencies. Information is disseminated to the Department of State, pursuant to 8 CFR 208.10(b), to allow its preparation of advisory opinions regarding applications for political asylum; to the Federal courts to enable their review of EOIR administrative decisions on appeal; to Members of Congress to respond to consitituent inquiries; and, to the representative or attorney of record to ensure fair representation. Finally, in any claim in which there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, information, including investigatory information, may be disseminated to the appropriate Federal, State or local agency charged with the responsibility of investigating or prosecuting such violation or with enforcing or implementing such law.

Release of information to the news media and the public: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular matter would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in the system, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration: A record from the system of records may be disclosed to the National Archives and Records Administration (NARA) for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in file cabinets. A subset of the records is maintained on fixed disks or removable disk packs which are stored in file cabinets. All records are stored in secured EOIR office space.

RETRIEVABILITY:

Manual records are indexed by alien file number. Automated records are retrievable by a variety of indentifying data elements including, but not limited to, alien file number, alien name and nationality.

SAFEGUARDS:

Information maintained in the system is safeguarded in accordance with Department of Justice rules and procedures. Record files are maintained in file cabinets accessible only to EOIR employees. Automated information is stored on either fixed disks or removable disk packs which are stored in cabinets. Only EOIR employees in possession of specific access codes and passwords will be able to access automated information. All manual and automated records and mediums are located in EOIR office space accessible only to EOIR employees and locked during off-duty hours.

RETENTION AND DISPOSAL:

Record files are retained for six months after the final disposition of the case, then forwarded to regional Federal Records Centers. Automated records are maintained in EOIR field office data bases for ninety days after final disposition, then transferred to the host computer at EOIR headquarters and retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Counsel to the Chief Immigration Judge, Executive Office for Immigration Review, Office of the Chief Immigration Judge, U.S. Department of Justice, 5201 Leesburg Pike, Suite 1501, Falls Church, Virginia 22041.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager listed above.

RECORD ACCESS PROCEDURES:

Portions of this system are exempt from disclosure and contest by 5 U.S.C. 522a (k)(1) and (k)(2). Make all request for access to those portions not so exempted by writing to the system manager identified above. Clearly mark the envelope and letter "Privacy Access Requests"; provide the full name and notarized signature to the individual who is the subject of the record, his/her date and place of birth, or any other identifying number or information which may assist in locating the record; and, a return address.

CONTESTING RECORD PROCEDURE:

Direct all requests to contest or amend information maintained to the system manager listed above. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Department of Justice offices and employees, primarily those of the Immigration and Naturalization Service; the Department of State and other Federal, State and local agencies; and the parties to immigration proceedings and their witnesses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain records of this system from the access provisions of the Privacy Act (5 U.S.C. 552a (d)) pursuant to 5 U.S.C. 552a (k)(1) and (k)(2). Rules have promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

JUSTICE/EOIR-999

SYSTEM NAME:

Appendix to Executive Office for Immigration Review System of Records.

EOIR field offices are located as follows:

Executive Office for Immigration Review, Office of the Immigration Judge, Richard B. Russell Federal Building, 75 Spring Street, SW., Room 1310, Atlanta, Georgia 30303

Executive Office for Immigration Review, Office of the Immigration Judge, E.A. Garmatz Federal Building, 100 South Hanover Street, Room 3100, Baltimore, Maryland 21210

Executive Office for Immigration Review, Office of the Immigration Judge, John F. Kennedy Federal Building, Government Center, Room E–431, Boston, Massachusetts 02203

Executive Office for Immigration Review, Office of the Immigration Judge, Statler Building, 8th Floor, Buffalo, New York 14202

Executive Office for Immigration Review, Office of the Immigration Judge, 219 South Dearborn Street, Room 423, Chicago, Illinois 60604

Executive Office for Immigration Review, Office of the Immigration Judge, Federal Building, 1100 Commerce Street, Room 3A6, Dallas, Texas 75242
Executive Office for Immigration Review, Office of the Immigration Judge, Federal Office Building, 1961 Stout Street, Room 1708, Denver, Colorado 80202
Executive Office for Immigration Review, Office of the Immigration Judge, 511 East San Antonio, U.S. Courthouse, Room 509, El Paso, Texas 79901
El Paso Service Processing Center, 8915 Montana, El Paso, TX 79925
Executive Office for Immigration Review, Office of the Immigration Judge, 2320 La Branch Street, Room 2235, Houston, Texas 77004
Houston Detention Facility, 15850 Export Plaza Drive, Houston, TX 77032
Executive Office for Immigration Review, Office of the Immigration Judge, 300 North Los Angeles Street, Room 8110, Los Angeles, California 90012
Executive Office for Immigration Review, Office of the Immigration Judge, Interfirst Bank Tower, 222 East Van Buren, Harlingen, Texas 78550
Port Isabel Service Processing Center, Route 3, Box 1200, Building 37, Los Fresnos, TX 78566
Executive Office for Immigration Review, Office of the Immigration Judge, 7880 Biscayne Boulevard, 8th Floor, Miami, Florida 33138
Krome North Processing Center, Office of the Immigration Judge, Snapper Creek Station, Miami, Florida 33116
Executive Office for Immigration Review, Office of the Immigration Judge, Federal Building, 970 Broad Street, Room 308, Newark, New Jersey 07102
Executive Office for Immigration Review, Office of the Immigration Judge, 26 Federal Plaza, Room 13130, New York, New York 10278
Varick Street Service Processing Center, 201 Varick Street, Room 645, New York, New York 10014
Executive Office for Immigration Review, Office of the Immigration Judge, Federal Building, Room 3425, 230 North First Avenue, Phoenix, Arizona 85025
INS Detention Camp, Highways 80 and 89, Florence, Arizona 85232
Executive Office for Immigration Review, Office of the Immigration Judge, 727 East Durango Boulevard, Room B-322, San Antonio, Texas 78206
Executive Office for Immigration Review, Office of the Immigration Judge, New Federal Building, 880 Front Street, Room 5N44, San Diego, California 92188
Office of the Immigration Judge, 1115 N. Imperial Avenue, First Floor, El Centro, California 92243
Executive Office for Immigration Review, Office of the Immigration Judge, 630 Sansome Street, Room 404, San Francisco, California 94111
Executive Office for Immigration Review, Office of the Immigration Judge, 815 Airport Way, South, Room 108, Seattle, Washington 93134
Executive Office for Immigration Review, Office of the Immigration Judge, 25 "E" Street, N.W.—Lobby Door, Washington, D.C. 20538
Office for Immigration Judge, Federal Detention Center, P.O. Box 5050, Oakdale, Louisiana 71460

[FR Doc. 86-10055 Filed 5-5-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Board and Committee; Meetings and Agenda

The regular spring meetings of the Board and Committees of the Business Research Advisory Council will be held on May 28, 29, and 30, 1986. All of the meetings will be held in Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, May 28

10 a.m.—Committee on Employment and Unemployment Statistics, Room N-3437 A and B, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW.

1. Impact of FY 1986-87 Budgets on Programs
2. Status of On-going Programs
   a. Plant Closing-Mass Layoff Reporting
   b. Status of Improvements to Local Area Statistics
   c. Measurement of Trends in Temporary Help Sector
   d. Occupational Employment Statistics
   e. Adjustments to CPS for Hispanics and Undocumented Workers
   f. Displaced Worker Data
   g. Employment and Trade Statistics
3. Special Topics:
   a. SIC Revision
   b. Part-time Employment Trends
4. Other Business

Wednesday, May 28

1:30 p.m.—Committee on Economic Growth, Room N-3437 A and B, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW.

1. Update on Budget Situation
2. Outline of Time Schedule for 1986-2000 Projections
3. Review of Three On-going Studies
   a. De-industrialization
   b. The Declining Middle
   c. Outlook for the Medical Services Industry
4. Other Business

Thursday, May 29

9:30 a.m.—Committee on Productivity/Foreign Labor, Room S-4215, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW.

1. Impact of GNP Revisions on Productivity Measures
2. Report of Work on Multi-Factor Productivity Measures for 2-digit Manufacturing Industries
3. New OMB Government Productivity Program and Relation to BLS Productivity Program
4. Developments in International Comparisons Work
5. Other Business

10 a.m.—Committee on Occupational Safety and Health Statistics, Room N-4437, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW.

1. National Academy of Sciences Study and General Program Developments
2. Recordkeeping Guidelines
3. On-Site Case Study and Post Symposium Developments
4. WIR Updates
5. SDS Updates
6. Other Business

1:30 p.m.—Committee on Price Indexes, Room N-4437, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW.

1. Derivation of Personal Consumption Expenditures and Department of Energy Consumption Estimates
2. Other Business

Friday, May 30

9 a.m.—BRAC Board, Room N-4437, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW.

1. Chairperson's Opening Remarks
2. Commissioner's Remarks—Janet L. Norwood
3. Committee Reports:
   a. Employment and Unemployment Statistics
   b. Economic Growth
   c. Occupational Safety and Health Statistics
   d. Productivity/Foreign Labor
   e. Price Indexes
4. Other Business
5. Chairperson's Closing Remarks

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Janice D. Murphey, Liaison, Business Research Advisory Council on Area Code (202) 523-1347.

Signed at Washington, DC, this 29th day of April 1986.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 86-10131 Filed 5-5-86; 8:45 am]

BILLING CODE 4510-24-M

Pension and Welfare Benefits Administration

[Application No. D-6071 et al.]

Proposed Exemptions; United Parcel Service Thrift Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

United Parcel Service Thrift Plan (the Thrift Plan) and United Parcel Service Retirement Plan (the Retirement Plan; Together, the Plans) Located in Greenwich, Connecticut

[Application Nos. D-6071 and D-6366]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the acquisition by the Plans of six aircraft from United Parcel Service Co. (UPS Co.), provided the Plans pay no more than the fair market value of the aircraft on the date of acquisition; (2) the leaseback of the aircraft by the Plans to UPS Co., under the terms described in this notice of proposed exemption, provided such terms are not less favorable to the Plans than those terms obtainable in an arm's-length transaction with an unrelated party; (3) the guarantee of UPS Co.'s payments under the lease by United Parcel Service of America, Inc. (UPS); (4) the acquisition of notes issued by the Plans by Overseas Partners, Ltd. (OPL), in connection with the transaction; and (5) the possible future reacquisition of the aircraft by UPS Co. for cash pursuant to the terms of the lease.

Summary of Facts and Representations

1. The sponsors of the Plans are UPS and several of its domestic subsidiaries. UPS is a holding and management company, the principal subsidiaries of which provide specialized transportation services, primarily through the delivery of small parcels, throughout the United States, portions of Canada, and all of West Germany. UPS is the largest motor carrier in the United States. With minor exceptions, all UPS stock is owned by or for the benefit of over 10,000 managers and supervisors in the employ of UPS and its subsidiaries, or by former employees and their families. UPS Co., one of the employers participating in the Plans, is an operating subsidiary of UPS which provides parcel delivery services.

2. The Thrift Plan is a savings and profit sharing plan designed to provide benefits to employees of UPS and certain of its subsidiaries, upon their retirement, death, or other separation from service. As of June 30, 1985, the Thrift Plan had approximately 91,800 participants. The Thrift Plan had assets of approximately $461,577,000 as of October 31, 1985. The Retirement Plan is a non-contributory defined benefit pension plan. As of June 30, 1985, the number of active participants in the Retirement Plan was approximately 22,200, all of whom are employees of UPS and its subsidiaries. The Retirement Plan had approximately $439,834,000 in assets as of October 31, 1985. Bankers Trust Company (BTC) serves as a directed trustee of the assets of the Plans, taking its directions from the Plans' Administrative Committees.

3. UPS Co. owns approximately 60 aircraft which it uses in its air service operations. The applicants have requested an exemption to permit UPS Co. to sell six Boeing 747-123SF aircraft (the Aircraft) to the Plans and to lease the Aircraft back from the Plans. The purchase price for the Aircraft would be their current fair market value as determined by Avmark Services, Ltd. (Avmark), an experienced, independent appraiser of aircraft. Avmark has performed a preliminary appraisal of the Aircraft as of August 30, 1985, and has estimated their fair market value at approximately $151,000,000. It is proposed that the Thrift Plan will take a two-thirds participation in this transaction, and that the Retirement Plan will take a one-third participation. Thus, as of October 31, 1985, the transaction would involve approximately 19.7% of the Thrift Plan's assets, and approximately 13.3% of the Retirement Plan's assets.

4. It is anticipated that $50,000,000 of the purchase price for the Aircraft will be provided by the two Plans. The Plans would obtain the balance by issuing interest-bearing evidence of

indebtedness (Secured Equipment Certificates) to OPL, in exchange for which OPL would provide the Plans with an amount equal to approximately $101,000,000 of the purchase price of the Aircraft. OPL is a Bermuda corporation, engaged in the property and casualty reinsurance business, 97% of whose stock is owned by shareholders of UPS. None of such shareholders owns 10% or more of OPL's stock. However, one or more members of the Plans' Administrative Committees are also officers or directors of OPL. Payment of interest and principal on the Secured Equipment Certificate would be secured by the pledge of the Aircraft, the lease of the Aircraft by the Plans to UPS Co., the residual value insurance (see rep. 6, below), and UPS's guarantee of UPS Co.'s payment obligations under the lease. The holders of the Secured Equipment Certificates have no recourse to any assets of the Plans.

5. Immediately following the sale, the Plans would lease the Aircraft to UPS Co. for a term of 15 years. Rental under the lease would equal both the debt service for the Secured Equipment Certificates and payment to the Plans to amortize their cost and provide them with a return on their investment. Rental rates have been calculated so that over the first 10 years of the lease, the Plans will be paid their total investment plus an annual yield of 12.5%. If the lease continues for the full 15 year term, the average annual rate of return over the 15 year term will be 15%. The lease may be terminated by UPS Co. (i) at any time if the payments on the Secured Equipment Certificates become subject to Federal income tax withholding in certain circumstances; and (ii) otherwise at any time after 1990. Upon termination, UPS Co. is required to attempt to obtain a purchaser for the Aircraft or may purchase the Aircraft itself, in which event it would be required to make up the deficiency between (i) Termination Value (the amount necessary to liquidate the Secured Equipment Certificates plus the amount necessary to return the Plans' investment and provide their expected 15% return to the date of payment) and (ii) the proceeds of such purchase or purchases. In addition, if the Aircraft are destroyed and not replaced by UPS Co., UPS Co. is required to pay the Plans Stipulated Loss Value, which is equal to Termination Value.

6. Two additional termination features have been provided to cause the lease to be characterized as an operating lease for financial reporting purposes but as a financing transaction for tax purposes. To provide the required financial reporting treatment, UPS Co. has been given the option at the end of 10 years to either purchase the Aircraft or to "walk away" (i.e., to cancel the lease, without making further payments, and without acquiring the Aircraft), in which case the Plans would sell the Aircraft. If UPS Co. exercises the purchase option, which is at the lower of fair market value or Termination Value, or the "walk away" option, and the resultant sale of the Aircraft does not produce an amount which will discharge the Secured Equipment Certificates, an insurer would be required to pay the difference under a residual insurance policy to be purchased at the inception of the transaction by UPS Co. and maintained by it during the first 10 years of the lease (see rep. 4, above). At that point, rentals received by the Plans would have provided a return of their total investment and an average annual 12.5% yield. The inclusion of the "walk away", and the purchase option at the lower of fair market value or Termination Value, at the end of 10 years, is intended to support the characterization of the lease as an operating lease under generally accepted accounting principles. By using the lesser (instead of the greater) of fair market value or Termination Value for the purchase option, the applicants represent that the Plans' income from the transaction will not be subject to taxation under the unrelated business taxable income provisions of the Code. The Plans are assured the expected minimum rate of return of 12.5% through lease payments, and the payment for the Aircraft will bring that return to 15% if Termination Value is paid, and something in excess of 12.5% in the event that fair market value is less than Termination Value at the time in question. Termination Value at the ten year point is based on an appraisal by Avmark indicating that the fair market value of the Aircraft at that time is expected to approximate Termination Value at that time. To obtain the desired tax treatment, if UPS Co. continues the lease for its full 15 year term, then, at the end of this period, it has an option to purchase any or all of the Aircraft at the nominal price of $1.00. The lease ensures that the exercise of this option will not be unfair to the Plans, because at the end of 15 years, the Plans would have been repaid their investment and an effective annual 15% yield over the 15 year term.

7. The applicants represent that the proposed transactions provide a number of important benefits and protections for the Plans. UPS Co.'s payments under the lease are guaranteed by UPS. Thus, the Plans can look for payment to the creditworthiness of UPS, a corporation with over $3 billion in total assets. At closing, the Plans will pay for the Aircraft their current fair market value as determined by Avmark, a firm of nationally recognized, independent aircraft appraisers. UPS Co. is required to pay rent until the lease expires or is terminated, regardless of any or all circumstances. The lease is net, such that UPS Co. is responsible for all the costs of insuring, maintaining and operating the Aircraft. In addition, UPS Co. will pay all transaction costs relating to the transaction. The lease contains a number of remedies for the Plans if UPS Co. defaults, including the right to take possession and sell the Aircraft and to obtain a cash payment from UPS Co. in an amount that when added to the sale proceeds will provide the Plans with a return of their total investment and expected return.

8. For purposes of the proposed transaction, the Plans have retained an independent trustee, the Connecticut National Bank (the Bank). The Bank is independent of and unrelated to the Plans, UPS Co., and all other employers participating in the Plans, and has no commercial or business relationship to these employers, except that it acts as an investment advisor to the Retirement Plan. The Bank has extensive experience as a corporate fiduciary which includes management of assets in excess of $2,175,000,000, both real and personal, held by the Bank as trustee for plans which are subject to the Act. The Bank has consulted with counsel familiar with the provisions of the Act, and has been advised of its duties, liabilities and responsibilities as a fiduciary under the Act.

9. The Bank has concluded that the proposed transaction is in the interest of both Plans and is protective of the rights of the participants and beneficiaries of the Plans. The Bank represents that the terms and conditions of the transaction are at least as favorable to the Plans as those generally obtainable from unrelated parties in a similar investment. The Bank also represents that, in its opinion, the subject transaction or a like transaction would be marketable to unrelated third parties. In reaching these conclusions, the Bank represents that it has considered the following factors to be particularly significant:

(a) The Bank has the authority necessary to monitor and enforce the transaction for the benefit of the Plans;

(b) The Plans will pay no investment management fees, advisory fees, underwriting fees, sales commissions or

similar compensation in connection with the proposed transaction;

(c) The percentages of the Plans' assets invested in the transaction will be approximately 19.7% of the Thrift Plan's assets and 13.3% of the Retirement Plan's assets, and these percentages are likely to decrease as the Plans' assets increase;

(d) Considering the Plans' overall investment portfolios, the investments of the Plans, after the Plans enter into the proposed transaction, will be sufficiently diversified and adequately liquid;

(e) The risk of loss to the Plans is minimal given the size and creditworthiness of UPS Co., and its guarantor UPS, and give other protections provided in the documents governing the proposed transaction;

(f) The return to the Plans compares favorably with other types of investments of similar quality generally available to the Plans, and the Plans will not sell any of their existing assets earning more than the projected rate of return on the proposed transaction in order to enter into the proposed transaction;

(g) The Plans will provide only the equity funds needed to consummate the proposed transaction and will have no liability under any circumstances to make any payments with respect to the loan made in connection with the proposed transaction;

(h) The provisions of the lease for UPS Co., at the end of the 10th year or thereafter, to purchase the Aircraft, to terminate the lease, or to "walk away" from the lease, are all carefully designed to ensure that the Plans will be adequately protected under all of those circumstances;

(i) The lease requires UPS Co. to continue making payments under the lease, without set-off or recoupment, regardless of the condition or fitness of the Aircraft, except in stated circumstances in which the Plans would be adequately protected;

(j) The lease is a net lease, with all costs, taxes and expenses of the Aircraft to be borne by UPS Co.;

(k) The Bank is satisfied that income received by the Plans pursuant to the proposed transaction will not be taxable as unrelated business taxable income;

(l) The Bank has reviewed and relied upon Avmark's preliminary appraisal dated August 30, 1985, indicating the fair market value of the Aircraft to be approximately $151,000,000, and will require a final appraisal of the Aircraft by Avmark as of the closing date, which must be satisfactory to the Bank in its absolute discretion; and

(m) The Bank has extensive experience with leveraged lease transactions and is of the view that, in general, the proposed transaction is customary for the industry, except that the transaction is structured to provide the user of the equipment with the tax benefits inherent to ownership while still treating the transaction as an operating lease for accounting purposes. This difference is embodied in the purchase and "walk away" options after 10 years, and the nominal purchase option after 15 years. The inclusion of these options in the proposed transaction and the results thereof are not detrimental to the Plans or to the returns the Plans will receive from the proposed transaction.

10. BTC, which has extensive experience with regard to sale/leaseback transactions, has represented that it believes the transaction is fair, equitable and attractive to all participants. BTC further represents that it is willing and able to place third party debt in the transaction, and would be willing to step in as an equity participant in the transaction as well. BTC represents that it has closed several financing materially similar to the proposed transactions, and has several others pending. The applicants represent that the subject transaction is closely modeled upon a $148,400,000 leveraged lease financing for American Airlines, Inc., involving seven McDonnell Douglas DC–82 aircraft, which closed in July, 1983. The equity participants in that transaction were subsidiaries of BTC and UPS.

11. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) The transaction involves less than 25% of the assets of each Plan; (b) the purchase price for the Aircraft will be determined by an appraisal conducted by Avmark, a qualified, independent appraiser as of the date of closing; (c) the Plans' independent fiduciary, the Bank, has determined that the proposed transaction is appropriate for, in the best interest of, and protective of the rights of the Plans and their participants and beneficiaries; and (d) the Bank will monitor the transaction throughout its duration and will take whatever action is necessary to enforce the Plans' rights.

For futher information contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Fred A. Loe, D.D.S., P.A. Profit-Sharing Plan (the Plan) Located in Las Cruces, New Mexico

[Application No. D–6485]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the code [1] and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the purchase by the Plan of approximately 10.03 acres of vacant land located in Las Cruces, New Mexico, from Fred A. Loe, D.D.S. (Loe) for Loe's segregated account in the Plan, provided the Plan pays no more than fair market value for the property and the transaction represents no more than 25 percent of the assets in Loe's account at the time of purchase; and (2) the proposed transfer to the Plan in connection with the Plan's purchase of the real property of a real estate contract executed by Loe with unrelated third parties.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan that provides an individual, segregated account for each participant. As of January 1, 1986, the Plan had one participant, although there have been other participants in the past and may be others in the future. The Plan provides that each participant may direct the investments in his or her individual account.

2. Loe is a participant in the Plan as well as the Plan trustee and the sole shareholder of Fred A. Loe, D.D.S., P.A. The total assets in Loe's account as of January 1, 1986, equaled $167,678. Loe is the owner of approximately 10.03 acres of vacant land located just outside the border of Las Cruces, New Mexico.

3. An appraisal was made on the parcel of real property on June 24, 1985, by Milton A. Romney (Romney), a real estate appraiser located in Las Cruces, New Mexico. According to the applicant, Romney is independent of Loe. Using the direct sales comparison approach, Romney placed the fair market value of the property at $40,000. The parcel of land contains no on-site

[1] Because Fred A. Loe is the sole shareholder of the Employer and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

improvements. Romney states that the subject property is located in the path of city growth and, therefore, potential value is inherent.

4. the Plan proposes to purchase the real property from Loe for Loe's individual account in the Plan. Loe believes that the land represents a good investment for the account because he anticipates that the property will substantially appreciate in value. The Plan will pay the appraisal price stated in the application for the property or fair market value at the time of purchase, whichever is lower. Based on the most recent available data, the transaction will represent approximately 23.8 percent of the assets in Loe's account.

5. The Plan will pay no sales commissions or fees in connection with the purchase. The Plan will pay $8,864 in cash and will assume an existing real estate contract on the property in the remaining principal amount of $31,136. These figures will be adjusted at the closing to reflect payments made in the interim on the contract. The real estate contact bears an interest rate of 10 percent per annum, with 3½ years remaining to maturity as of February 1986. The contract will be repaid monthly in equal installments of principal and interest. The contract is presently held by the sellers of the land, Ysidro and Mary Lopez, who are unrelated to Loe and the Plan.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The Plan will pay no more than fair market value for the real property at the time of purchase, based on a current independent appraisal; (2) the purchase of the property will involve no fees or commissions; (3) the transaction will involve only Loe's individual account in the Plan and will represent less than 25 percent of the assets in that account; and (4) the applicant believes that the property should appreciate in value, resulting in further growth of the account.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

Union Gas System, Inc. and Affiliates Pension Trust Agreement (the Plan) Located in Independence, Kansas

[Application No. D-6489]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of 216 shares of common stock (the Stock) of Citizens National Bank, Independence, Kansas (the Bank) by the Plan to William H. Reeder [2] (Mr. Reeder), a party in interest with respect to the Plan, provided that the consideration paid for the Stock is not less than the higher of either $600 per share or the fair market value of the Stock on the date of the sale.

Summary of Facts and Representations

1. The Plan is a qualified money purchase pension plan, created in January 1944, with 614 participants and total assets of $9,865,428.83, as of August 31, 1985. These assets of the Plan consist of stocks, bonds, nongovernment obligations, and other securities. Included in the assets of the Plan is the Stock, which represents approximately a 5-percent interest in the Bank. Beginning June 25, 1947 and ending June 5, 1959, the Stock was acquired by the Plan in five different purchases, at varying prices per share, for a total expenditure of $16,354.17. Fiduciaries for the Plan are six individuals who are officers of the sponsoring employer, Union Gas System, Inc. (the Employer), located in Independence, Kansas. None of the fiduciaries is a shareholder or director of the Employer. The Employer is a diversified energy company whose activities include being (a) an interstate operator for distribution and transmission systems of natural gas; (b) an interstate distributor of propane gas; (c) a producer of oil and gas in two states; and (d) in the Kansas City metropolitan area, an owner and operator of mobile home subdivisions, industrial parks, shopping centers, and food supermarkets.

2. The Bank is primarily owned and controlled by a local family with whom Mr. Reeder is not related. The facilities of the Bank are located in three different small communities in the State of Kansas, where the prime economic activities are agriculture and the oil business. Both these economic activities are currently depressed and it appears they will be for the foreseeable future. The dividend history of the Stock for the past three years has been limited to $14 per share in 1983 and $10 per share in both 1984 and 1985. There is virtually no market for the Stock and its trading activities have been confined to transactions between shareholders of the Bank. Currently, of the 4,000 shares issued and outstanding, Mr. Reeder owns 26 shares of the common stock of the Bank. Mr. Paul Viets, President of the Bank, indicates that there is a very limited market for the Stock. Furthermore, he speculates that the only likely purchasers of the Stock would be the other directors of the Bank who own stock in the Bank. However, he is doubtful of their financial ability to acquire an additional 216 shares for themselves at $600 per share. In 1977, 160 shares were sold in seven different blocks at an average price of $486 per share. After receiving the offer made by Mr. Reeder and considering the limited market, the other five fiduciaries concluded that it was in the interest of the Plan and its participants and beneficiaries to sell the Stock to Mr. Reeder. Since Mr. Reeder was an interested party, he was not permitted to vote as a fiduciary of the Plan on this matter of selling the Stock to himself.

3. Mr. Grafton M. Potter, of the United Missouri Bank of Kansas City, determined that the market price for the common stock of the Bank would be realistic at $525 per share, as of December 31, 1984. He computed the book value at the same date to be $1,684.25 per share; and then, discounted the book value of the Bank's stock after noting that a few shares were sold during 1984 for $525 per share. Also, Mr. Potter noted that the President of the Bank, Mr. Viets, had represented to him that the principal reason the market price is discounted so extensively is because of the small dividend payout by the Bank and the lack of prospective purchasers of the Bank's common stock. In addition to Mr. Potter's appraisal, Mr. Walter I. Cole, of Beecroft-Cole & Company, Topeka, Kansas, a member of the Midwest Stock exchange, was requested to make an appraisal of the Stock. Mr. Cole determined that, as of June 1, 1985, the Stock, as a minority interest in a basically unmarketable security, had a value in the range of $550 to $600 per share.

4. Mr. Reeder, as an individual, proposes to purchase the Stock from the Plan for the higher of either the cash sum of $600 per share or the fair market value of the Stock on the date of the sale. The Plan will incur no expenses with respect to the proposed transaction. Mr. Reeder represents that his reasons for desiring to purchase the

[2] Mr. Reeder is one of six fiduciaries of the Plan and he is also one of seven directors of the Bank. In addition, Mr. Reeder is Senior Vice President and General Counsel of the sponsoring employer of the Plan, Union Gas Systems, Inc.

Stock are that he currently has the funds available; he believes that the Stock has long-term potential; and most importantly, as he is currently serving on the board of directors of the Bank, he will be able to have a direct control of his investment.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because (a) the proposed sale of the Stock will be a one-time transaction for cash; (b) the Plan will be able to invest the proceeds from the sale in better income producing assets; and (c) the Plan will receive the highest fair market price for the Stock as determined by a qualified independent appraiser.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Aerosol Services Company, Inc. Profit Sharing Plan (the Plan) Located in Industry, California

[Application No. D–6490]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of a parcel of real property (the Property) by the Plan to Aerosol Services Company, Inc. (Aerosol), or to Howard and Walter Lim (the Lims), parties in interest with respect to the Plan, for the greater of $725,000 or the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. Aerosol is a California corporation involved in developing aerosol-related products and providing services in connection with the aerosol industry. Aerosol is owned by two brothers, the Lims, who are also trustees of the Plan. The Plan had approximately 115 participants as of June 30, 1985, and had assets of approximately $875,000.

2. On December 12, 1972, the Plan purchased the Property from an unrelated party in an arm's-length transaction for $120,676. The Property is approximately 3.33 acres in size, is unimproved and is located in Industry, California. On the same date as the purchase, the Plan leased a portion of the Property to Aerosol. The leased portion of the Property represented approximately ⅓ of the Property, or about 20,000 square feet of the 145,000 square feet. Aerosol uses the leased portion for parking by its employees. The initial term of the lease was for a period of 10 years and called for monthly payments of $1,000. since the lease expired in December, 1982, the Plan has continued to lease the portion of the Property to Aerosol on a month-to-month basis for the same rental, $1,000 per month.[3]

3. The applicants now seek an exemption to permit the Plan to sell the Property to Aerosol, or alternatively, to the Lims. The sale will be for cash, and no commissions will be paid. Mr. Phillip Gottfried, M.A.I. (Mr. Gottfried), an independent appraiser located in Ontario, California, has determined the fair market value of the Property to be $725,000 as of May 10, 1985. The applicants represent that the fair market value of the Property will be updated by an M.A.I. appraisal immediately prior to its sale, and the sales price to be paid to the Plan will be the higher of $725,000 or its updated appraised value. Mr. Gottfried represents that the Property has no special value to Aerosol by virtue of its proximity to Aerosol's present location.

4. The applicants represent that the Plan has been receiving at least fair market rental value since July 1, 1984, for Aerosol's use of the portion of the Property. Mr. Gottfried determined that as of July 1, 1984, the portion of the Property leased to Aerosol had a fair market rental value of $833 per month, and that the rent of $1,000 per month currently being paid by aerosol to the Plan is a fair amount. However, the applicants recognize that the leasing of the portion of the Property by the Plan to Aerosol since July 1, 1984 constitutes a prohibited transaction, for which no exemptive relief is being proposed by the Department. Accordingly, Aerosol represents that it will pay all excise taxes due to the Internal Revenue Service by reason of its use of the Property, within 60 days of the granting of the exemption proposed herein.

5. In summary, the applicants represent that the proposed transaction meets the criteria of section 408(a) of the Act because: 1) the sale is a one-time transaction for cash; 2) no commissions will be paid on the sale; 3) the sales price is to be determined by an independent M.A.I. appraisal; and 4) with respect to the past prohibited lease, Aerosol will pay all excise taxes due within 60 days of the date of granting of the exemption proposed herein.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Michigan Lithographing Retirement Plan (the Plan) Located in Grand Rapids, Michigan

[Application No. D–6498]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of a certain parcel of improved real property (the Property) to the Michigan Lithographing Company (the Employer), the sponsor of the Plan, provided that the sales price is no less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which, as of January 1, 1985, had approximately 128 participants and total assets of approximately $535,074. The trustee of the Plan is Union Bank and Trust Company of Grand Rapids, Michigan (Union Bank). The applicant states that Union Bank is an independent trustee, exercising independent judgement and discretion over Plan investments with respect to assets of the Plan other than the Property. However, the applicant states further that with respect to the Property, Union Bank is a directed trustee and the Board of Directors of the Employer has investment discretion. The Employer is a Michigan corporation, located at 1 Carlton Avenue, S.E., Grand Rapids, Michigan, engaged in the lithographing business.

2. The Property is a rectangularly shaped parcel of land located at 25 Carlton Avenue, S.E., Grand Rapids, Michigan. The Property is the site of an existing two story, wood frame coverted residence occupied as an office, plus an

[3] The applicants represent that the leasing of the portion of the Property by the Plan to Aerosol was exempt through June 30, 1984 from the prohibitions of sections 406 and 407(a) of the Act and section 4975 of the Code by reason of sections 414(c)(2) and 2003(c)(2)(B) of the Act. The Department expresses no opinion as to whether the lease satisfied the conditions of Act sections 414(c)(2) and 2003(c)(2)(B).

asphalt paved parking lot. The Plan acquired the Property from the Employer in 1963. Since that time, the Plan has leased the Property to the Employer for use as an office, for storage, and for parking. The Property is adjacent to the Employer's property. The Employer is currently paying the Plan $550 per month in rent for the Property. The applicant states that the Plan is currently receiving fair market value rent for the Property as the result of an audit by the Internal Revenue Service (the Service). In addition, the Employer has paid to the Plan a sum of money determined by the Service as a "correction" to make the Plan whole for amounts due with respect to the difference between the past rents paid by the Employer and the past fair market value rental for the Property. The applicant states further that Form 5330, Return of Initial Excise Taxes Related to Pension and Profit Sharing Plans, has been filed with the Service. In addition, the Employer represents that additional Forms 5330 will be filed and appropriate excise taxes for the remainder of the leasing transaction will be paid within 60 days of the date of a grant of an exemption for the proposed sale of the Property.

3. The Property was appraised on March 4, 1986 by Joseph H. Foster, M.A.I. (Mr. Foster), an independent real estate appraiser in Grand Rapids, Michigan, as having a fair market value of $57,000. Mr. Foster states that consideration was given to the plottage value of the Property and the Property's proximity to the Employer's adjacent location in arriving at the appropriate fair market value. Mr. Foster represents that in his opinion the market value for the Property would be lower if it were not located adjacent to an industrial district. However, the applicant states that other potential purchasers are not as likely to pay as much for the Property as the Employer because of its proximity to the Employer's property.

4. The Employer proposes to purchase the Property for $57,000 in cash in accordance with Mr. Foster's appraisal. The applicant represents that the sale of the Property to the Employer is in the best interest of the Plan's participants and beneficiaries since the proceeds of the sale can be reinvested in other assets and create greater diversity. The Plan will not pay any fees or commissions in connection with the sale.

5. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because: (a) the sale will be a one-time tansaction for cash; (b) the Plan will receive the fair market value for the Property as determined by an independent qualified appraiser; and (c) the Plan will not pay any commissions or other expenses in connection with the sale.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Michigan National Bank Pooled Fund for Qualified Retirement Plans (MNB Grand Rapids Pooled Fund) and Michigan National Bank of Detroit Pooled Trust Fund A (MNB Detroit Pooled Fund) Located in Grand Rapids and Detroit, Michigan

[Application No. D-6506]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the proposed merger of the MNB Detroit Pooled Fund into the MNB Grand Rapids Pooled Fund, provided that the aggregate fair market value of the interests of each plan participating in these two funds (collectively, the Funds), upon completion of the merger transaction, equals the aggregate fair market value of such plan's interest in the Funds immediately preceding the merger.

Summary of Facts and Representations

1. Both Michigan National Bank of Detroit (MNB Detroit) and Michigan National Bank (MNB Grand Rapids) are National Banking Associations, whose capital stock, other than qualifying shares held by directors, is owned by Michigan National Corporation, a registered bank holding company under the Bank Holding Company Act of 1956. MNB Detroit serves as trustee for numerous qualified retirement benefit plans which participate in the MNB Detroit Pooled Fund, and MNB Grand Rapids serves as trustee, or agent for the trustee, of numerous qualified retirement benefit plans which participate in the MNB Grand Rapids Pooled Fund.

2. The MNB Detroit Pooled Fund had 42 participating plans with total net assets of $18,742,514, as of March 31, 1985. These participating plans are offered by the MNB Detroit Pooled Fund three options in investment funds: an Equity Fund, a Fixed Income Fund, and a Limited Volatility Fund. Pursuant to the terms and conditions of the MNB Detroit Pooled Fund, MNB Detroit has the privilege and authority to divide any of its investment funds into a greater number of units of a lesser value or into a smaller number of units of a greater value, as long as the proportionate interest of each participating plan is not changed. Furthermore, MNB Detroit has the right to sell, transfer, or dispose of any assets of the respective investment funds and to terminate any of the investment funds at the discretion of its board of directors. Upon a decision to terminate an investment fund, and after providing the required notice to interested parties, MNB Detroit would be required to transfer the assets of the terminating investment fund into a separate liquidating account for disposition for the sole benefit of the participating plans. Distributions from the liquidating account must be made ratably in accordance with respective unit interests of the participating plans.

3. The MNB Grand Rapids Pooled Fund had 333 participating plans and total net assets of $67,009,094.71, as of June 30, 1985. These participating plans are offered five choices as to investment funds: a Liquidity Fund, a Limited Volatility Fund, a Fixed Income Fund, an Equity Fund, and a Mutual Equity Fund. The terms and conditions of the MNB Grand Rapids Pooled Fund permit MNB Grand Rapids to divide any of its investment funds into a greater number of units of lesser value or into a smaller number of units of greater value as long as the proportionate interest of each participating plan is not changed. Furthermore, MNB Grand Rapids is authorized to accept deposits to any of its investment funds in even multiples of the then fair value of each unit in that investment fund.

4. The applicants propose that the MNB Detroit Pooled Fund be merged into the MNB Grand Rapids Pooled Fund. This merger will be accomplished in two steps which will occur simultaneously with no cash exchanged between the funds. The first step will involve MNB Detroit transferring the majority[4] of the assets in its MNB Detroit Pooled Fund at fair market value, based upon values reflected on national securities exchanges, to the MNB Grand Rapids Pooled Fund. Any securities not traded on national securities exchanges will have their fair market value determined by MNB Detroit with information available to it. There are only two securities[5] of the

[4]It is not known how many of the participating plans will transfer to the MNB Grand Rapids Pooled Fund; however, it is anticipated most will do so.

[5]The securities are two bonds, each in the principal amount of $60,000, issued by the City of

Continued

MNB Detroit Pooled Fund which are not listed on a national securities exchange. In addition, each participating plan will be given the opportunity to discontinue its participation in the MNB Detroit Pooled Fund immediately prior to the proposed transfer and have its assets invested in a different manner than being invested in the MNB Grand Rapids Pooled Fund. The second step of the proposed merger will involve the issuance of units in MNB Grand Rapids Pooled Fund to the former participating plans in the MNB Detroit Pooled Fund. The portion of the proceeds attributable to each investment fund from the MNB Detroit Pooled Fund will be invested in a comparable investment fund under the MNB Grand Rapids Pooled Fund. No fractional units of participation will be issued. The MNB Grand Rapids Pooled Fund will pay each participating plan cash equal to the fair market value of any fractional units to which the plan would otherwise be entitled. MNB Grand Rapids has reviewed the assets of MNB Detroit Pooled Fund and has determined that the assets to be received from MNB Detroit Pooled Fund are appropriate investments for the MNB Grand Rapids Pooled Fund. Neither MNB Detroit nor MNB Grand Rapids will receive any fee or commission with respect to the transfer of assets in the proposed transactions. It is further represented by the applicants that each participating plan in the MNB Detroit Pooled Fund (other than those discontinuing participation) will obtain units of equal value in the corresponding investment fund of the MNB Grant Rapids Pooled Fund. The only difference will be a further diversification of each investment represented by each unit in the MNB Grand Rapids Pooled Fund. MNB Grand Rapids will become solely responsible for the administration and investment of all the remaining assets which were previously and separately held by the Funds.

5. The applicants represent that although both of the existing Funds are adequately diversified, their merger would produce a single, larger pooled fund with a greater diversification of investments, which will benefit the participating plans. Moreover, the increased amount of assets in the resulting pooled fund will broaden the range of its potential investments and permit it to benefit from volume discounts on certain services it purchases. Also, the new pooled fund will permit a more efficient and economical administration of the investment of assets, eliminating the duplication of efforts by the Funds. The merger will centralize and enhance the expertise in administering the Funds.

6. In summary, the applicants represent that the proposed transactions meet the statutory criteria contained in section 408(a) of the Act because (a) neither MNB Detroit, MNB Grand Rapids, nor any affiliate of either bank will receive any fee or commission in connection with the transactions; (b) the fair market value of the interest of a participating plan in the Funds will remain unchanged by the proposed transactions; (c) the assets of each participating plan will be invested in the same type of investments both before and after the proposed transactions; (d) the proposed transactions wil result in additional diversification of current investments of participating plans and will permit further diversification in the future because the larger size of the resulting pooled fund; and (e) the proposed transactions will permit the more efficient administration of the funds by the banks owned by Michigan National Corporation.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Thayer E. and Anne K. Merrill, Ltd. Defined Benefit Pension Plan (the Plan) Located in Scottsdale, Arizona

[Application No. D–6509]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase by the Plan of a mortgage note (the Note) from Thayer E. Merrill and Anne K. Merrill (the Merrills), who are the sole participants in and trustees of the Plan and disqualified persons with respect to the Plan,[6] for cash in the amount of $42,812.20, provided that such amount does not exceed the fair market value of the Note on the date of sale; and (2) the fair market value of the Note constitutes no more than 25% of the Plan's net assets after its purchase.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with two participants, Thayer E. Merrill and his wife, Anne K. Merrill, who are also the sole shareholders of Thayer E. and Anne K. Merrill, Ltd. (the Plan Sponsor) and the trustees of the Plan. The Plan had net assets, as of January 31, 1986, of approximately $151,973.

2. The Merrills are the holders of and payees on a first deed of trust note (the Note) in the face amount of $45,000, bearing interest at the rate of 10% per annum payable annually from December 16, 1985 until December 16, 1987, at which time the principal balance, together with any accrued interest, must be paid in full. The Merrills represent that all payments on the Note have been made in a timely manner. The makers of the Note (the Makers) are Mr. and Mrs. Dougles D. Sutton, Mr. and Mrs. Dean K. Woodward and Mr. and Mrs. George E. Hanson, all of whom are unrelated to the Plan and to the Merrills. The Note is the result of the December 16, 1984 sale of three undivided one-third interests in certain unimproved real property (the Property) by the Merrills to the Makers. The Property was sold to the Makers for $65,000, of which $20,000 was paid in cash. The Note is secured by the Property. The Property is otherwise unencumbered.

3. The Note was appraised on March 7, 1986 by Mr. Donald J. Bernstein, president of Mutual Mortgage, Inc., a business which has been engaged in the buying and selling of trust deeds for over five years. Mr. Bernstein determined the fair market value of the Note on that date to be $42,812.20, based on a discount rate of 15%. Mr. Bernstein states that 15% is an appropriate discount rate as the real estate underlying the Note is raw land and there are no current payments of principal on the Note. Mr. Bernstein is independent of the Merrills.

4. The Merrills propose to sell the Note to the Plan for cash in the amount of $42,812.20. The Merrills, as trustees of the Plan, state that the purchase of the Note would be an excellent investment for the Plan as the Plan will have a high rate of return on a very well secured investment. The applicants represent

London, Ontario and maturing December 15, 1986, and 1987, respectively. They were each acquired for $60,426 in a private placement and were last valued, as of March 31, 1985, with the 1986 bond valued at $58,062 and the 1987 bond valued at $56,550. These two bonds represent less than ¾ of 1-percent of the total assets of the MNB Detroit Pooled Fund.

[6] Because Thayer E. Merrill and Anne K. Merrill (the Merrills) are husband and wife and are the sole shareholders of the plan sponsor as well as the sole participants in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

that, prior to the Plan's purchase of the Note, the Plan Sponsor will make an additional contribution to the Plan in an amount such that the value of the Note after its purchase by the Plan will represent no more than 25% of the Plan's net assets. The Plan will pay no brokerage fees or commissions with respect to the purchase of the Note. The applicants represent also that if any present or future employees of the Plan Sponsor become eligible to participate in the Plan, a separate, comparable Plan will be established so that the Merrills will be the only participants affected by the proposed transaction.

5. In summary, the applicants represent that the proposed transaction meets the statutory criteria of section 4975(c)(2) of the Code because:

(a) The Plan will purchase the Note for its fair market value as determined by a qualified, independent appraiser;

(b) The Plan's trustees have determined that the proposed purchase of the Note is protective of and in the best interest of the Plan;

(c) The purchase of the Note by the Plan will be a one-time transaction for cash;

(d) The Plan will pay no fees or commissions with respect to its purchase of the Note; and

(e) The transaction will at all times only affect the Merrills' interests in the Plan.

Since the Merrills are the only participants in the Plan and the sole owners of the Plan Sponsor, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments with respect to this proposed exemption are due 30 days after the date of publication of this notice in the **Federal Register.**

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

NBD Banks Short-term Investment Fund for Master Trust/Custodian Accounts (the Fund) Located in Detroit, Michigan

[Application No. D–6578]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the making of a three-day repurchase agreement that was entered into on September 27, 1985, between the Fund and the National Bank of Detroit (NBD).

Summary of Facts and Representations

1. NBD is a national banking association with its principal offices in Detroit, Michigan. NBD has established and maintains the Fund as a domestic trust within the United States for the collective investment and reinvestment of moneys contributed thereto by NBD and its affiliate banks in their capacity as fiduciaries of participating trusts that are qualified under section 401 of the Code and exempt from income taxation under section 501(a) of the Code. At the time of the transaction described below, the Fund had 369 participating investment accounts representing 105 trust, agency, and custodial relationships. As a group trust, the Fund is a trust that constitutes a part of each of the qualified plans that is a participating account. NBD as Trustee (the Trustee) of the Fund is thereby subject to the duties and responsibilities of a fiduciary with respect to each such qualified plan.

2. Designated personnel in NBD's Trust Division execute NBD's responsibilities as Trustee of the Fund. Each day NBD's Trust Division calculates the amount of cash in the Fund available for investment in various types of short-term money market instruments. NBD has established guidelines for such investments which include an approved list of banks and broker-dealers through which the Trust Division's investment officers may invest the cash of the Fund. These investments typically are made through the New York City financial markets. NBD does not have established contracts with financial markets in other areas of the country.

3. Early in the day on Friday, September 27, 1985, Hurricane Gloria threatened the East Coast and, in particular, New York City. The threat was sufficiently severe to cause the financial markets in New York and in some other parts of the country either not to open or to close by the middle of the morning. An NBD Trust Division cash investment officer was able to invest most of the cash of the Fund available on September 27 through the New York markets before those markets closed at about 10:00 a.m. Until approximately 11:00 a.m. the officer investor some of the remaining money with direct issuers in Detroit. However, as revised cash-for-investment figures for the Fund later became available, the officer was unable to find a direct issuer on the NBD approved list that was still open for investment. Finally, $12,000,000 of Fund cash remained uninvested. The $12,000,000 represented 11 percent of the Fund cash available that day for investment. Of the Fund's total assets of $888,921,129, the $12,000,000 represented 1.35 percent.

4. One of the purposes of the Fund is to keep all available cash invested at all times. In light of NBD's obligation as Trustee of the Fund to invest the remaining $12,000,000 in cash, and with no apparent external sources available, the investment officer called the Bank Investment Division of NBD to determine the availability of suitable investment vehicles. The Bank Investment Division offered a three-day repurchase agreement with NBD at the market rate of 7.375 percent. The investment was made at 1:15 p.m. on September 27. Pursuant to the agreement, United States Treasury Notes having a market value of $12,375,010 were transferred to the Fund. Consequently, under the repurchase agreement, the Fund held U.S. Government securities having a market value of more than 103 percent of the purchase price paid by the Fund. On Monday morning, September 30, the Government securities underlying the repurchase agreement were transferred back to the Bank Investment Division in exchange for $12,007,375 pursuant to the terms of the agreement.

5. NBD loaned the $12,000,000 at the Federal funds rate on September 27 and made net earnings of $595, after taking account of the interest paid to the Fund on the repurchase agreement. NBD received no fees or commissions in connection with the agreement, and will return to the Fund the net earnings of $595 it made from the $12,000,000 during the term of the repurchase agreement.

6. The applicant represents that the repurchase agreement with NBD was entered into because of the extraordinary circumstances caused by Hurricane Gloria and because the only reasonable alternative was to leave the remaining $12,000,000 of Fund cash uninvested for the weekend. The applicant represents further that the terms and conditions of the repurchase agreement were at least as favorable to the Fund as those the Fund could have obtained from an unrelated party, and that the terms and conditions of the agreement were the same as those NBD would have used in dealing with an unrelated party.

7. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because: (1) NBD cash

investment officers made reasonable efforts to invest as much as possible of the Fund cash available for investment on September 27, 1985, with unrelated parties; (2) due to the unusual circumstances caused by Hurricane Gloria, the only reasonable alternative was to leave $12,000,000 of Fund cash uninvested for the weekend; (3) under the terms of the repurchase agreement, the agreement was entered into for only three days; (4) the repurchase agreement was made at the market rate of 7.375 percent; (5) the assets of the Fund involved in the repurchase agreement were protected at all times during the term of the agreement because the Fund received U.S. Government securities having a market value of more than 103 percent of the purchase price paid by the Fund; (6) NBD received no fees or commissions and will return to the Fund any net earnings it made from the agreement; and (7) the terms and conditions of the repurchase agreement were the same as those NBD would have used in dealing with an unrelated party.

For further information contract: Paul Kelty of the department, telephone (202) 523–8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 1st day of May, 1986.

Robert J. Doyle,

Deputy Assistant Admistrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–10132 Filed 5–5–86; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–455, STN 50–456 and STN 50–457]

Commonwealth Edison Co.; Issuance of Amendments to Construction Permits

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 1 to Construction Permit Nos. CPPR–131, CPPR–132 and CPPR–133 for the Byron Station, Unit 2 and the Braidwood Station, Units 1 and 2. Amendment No. 1 modifies the construction permits to reflect issuance, by the Commission, of an Exemption dated October 28, 1985. The Exemption, from a portion of the requirements of General Design Criterion 4 (GDC–4) of Appendix A to 10 CFR Part 50, was granted for the first two cycles of operation for Byron Station, Unit 2 and Braidwood Station, Units 1 and 2 to eliminate the need for pipe whip restraints and jet impingement shields on primary loop piping. The amendments are effective as of the date of issuance.

The application for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the amendments. Prior public notice of these amendments were not required since the amendments do not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendments dated September 25, 1985; (2) Amendment No. 1 to Construction Permits Nos. CPPR–131, CPPR–132 and CPPR–133; (3) the Exemption dated October 28, 1985, (4) the Commission's related Safety Evaluation; and (5) the Notice of Environmental Assessment and Finding of No Significant Impact dated October 21, 1985. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Rooms located in the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103 and in the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. In addition, a copy of items (2), (3), (4), and (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing–A, Office of Nuclear Reactor Regulation.

Dated this 29th day of April, 1986 in Bethesda, Maryland.

For the Nulear Regulatory Commission.

Vincent S. Noonan,

Director, PWR Project Directorate No. 5, Division of PWR Licensing–A.

[FR Doc. 86–10125 Filed 5–5–86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-53]

Initiation of Investigation Under Section 301; National Soybean Processors Association

On April 4, 1986, the National Soybean Processors Association (NSPA) filed a petition under section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411 et seq.) seeking relief from the effects of certain policies and practices of the Government of Argentina.

Argentina applies a 28.5 percent export tax on soybeans, and an 16.5 percent export tax on soybean oil and meal. NSPA argues that the export tax differential is unreasonable and burdens or restricts U.S. commerce. More specifically, NSPA contends that the export tax differential results in an

artificial and unfair cost advantage to Argentine soybean crushers, essentially because the export tax suppresses the domestic Argentine price of soybeans to a level well below world (and U.S.) prices—an advantage for Argentine processors that far exceeds the cost to them of the export tax on oil and meal.

NSPA claims the tax differential has distorted Argentina's export mix of soybean and soybean products and has resulted in vastly increased Argentine exports of oil and meal, suppression of world prices for oil and meal, and significantly reduced U.S. exports of oil and meal. NSPA also contends that the system costs Argentina both export earnings and tax revenues, relative to an equalized export tax.

On April 25, 1986, the United States Trade Representative decided to initiate an investigation based on the petition filed by NSPA in accordance with the provisions of 19 U.S.C. 2412(b).

USTR has requested bilateral consultations with representatives of the Government of Argentina. To assist USTR in preparing for these discussions, interested parties are invited to submit written comments with respect to issues raised in the petition. USTR is particularly interested in information on the following points:

(1) To what extent does the export tax on soybeans suppress the domestic price of Argentine soybeans?

(2) To what extent does the export tax differential distort the mixture of soybeans and soybean products exported from Argentina?

(3) What effect, if any, do factors other than the export tax differential have on exports of soybeans and soybean products from Argentina?

(4) What would be the economic effects on U.S. and Argentine growers and processors of eliminating the export tax differential by (a) raising the export tax on soybean products to the level for soybeans; (b) lowering the export tax on soybeans to the level of soybean products; and (c) equalizing the export taxes at another rate?

Comments should be filed in accordance with the procedures set forth in 15 CFR 2006.8 and should be submitted to the Chairman, Section 301 Committee, Office of the U.S. Trade Representative, Room 223, 600 17th Street NW., Washington, DC 20506 no later than June 5, 1986. Copies of the petition are available at the above address.

C. Christopher Parlin,

Acting Chairman, Section 301 Committee.

[FR Doc. 86-10069 Filed 5-5-86; 8:45 am]

BILLING CODE 3190-01-M

PRESIDENTIAL COMMISSION ON THE SPACE SHUTTLE CHALLENGER ACCIDENT

[Notice 86-34]

Presidential Commission on the Space Shuttle Challenger Accident; Meeting Change

AGENCY: Presidential Commission on the Space Shuttle Accident.

ACTION: Notice of Meeting Change.

SUMMARY: The scheduled meeting on May 2, 1986, of the Presidential Commission on the Space Shuttle Challenger Accident, published in the **Federal Register** on May 1, 1986 (51 FR 16241), Notice No. 86-33, has been changed as follows:

DATE: Date and time: May 2, 1986, beginning at 10:00 a.m.

ADDRESS: Department of Transportation, NASSIF Building, 10th floor, MIC Room, 400 7th Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. Alton G. Keel, Executive Director Presidential Commission on the Space Shuttle Challenger Accident (202/453-1797)

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

April 30, 1986.

[FR Doc. 86-10048 Filed 5-5-86; 8:45 am]

BILLING CODE 7510-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency clearance officer:—Kenneth A. Fogash, (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

13e-3

270-255

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 13e-3 (17 CFR 240.13e-3) under the Securities Exchange Act of 1934 ("Exchange Act") which provides that no issuer which has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934 shall engage in a Rule 13e-3 transaction unless a statement on Schedule 13E-3 with respect to the transaction has been filed with the Commission and the information contained therein has been sent to its equity security holders. The number of affected entities are approximately 196 per year.

Submit comments to OMB Desk Officer: Ms. Sheri Fox (202) 395-3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

John Wheeler,

Secretary.

April 29, 1986.

[FR Doc. 86-10134 Filed 5-5-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23180; File No. SR-CBOE-86-10]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 16, 1986, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The proposed rule change provides for a 6 month pilot program for the participation of three different groups on RAES: individuals, joint accounts, and member organizations with multiple nominees. Each is treated somewhat differently under the eligibility provisions. Individual market-makers may log onto RAES, are expected to continue on the system whenever present in the OEX pit for the remainder of the week, and may log on and off of the system whenever they leave the trading crowd.[1] Failure to meet the obligation to stay on the system while present in the OEX pit will disqualify a member from signing onto RAES for a period of one month, absent a good cause circumstance.

Joint account participants must all be on RAES simultaneously. Once the joint account has been logged onto RAES all

[1] The proposal, however, requires individual market makers to be on the system for the next expiration Friday.

members of the joint account will automatically remain on the system for the remainder of that week *and* will automatically be present on the system for the entire week containing the next expiration Friday. Members of the joint account will not be able to log off of RAES at will during a trading day, although relief can be obtained from the OEX Floor Procedure Committee. Such relief may be necessary, for example, where position limits would otherwise be violated or for financial capital reasons.

Member organizations may have multiple nominees on the system.[2] Any of the organizations nominees may log all such nominees onto the RAES system, using their acronyms and passwords. All nominees' trades will clear into the account of the designated nominee, as designated by each nominee. Whenever any of the participating nominees is logged onto the system, all must be. As a joint account, a group consisting of nominees of a member organization will log onto the system for a week at a time and will automatically be logged onto the system for the week containing expiration Friday. Release from these obligations can only be obtained from the OEX Floor Procedure Committee.

OEX Floor Procedure Committee reserves the authority to establish limits on the size of groups eligible to use RAES. The Committee also retains the right to disallow any group from participating in RAES where it appears to the Committee that such group is disproportionately large in comparison to other users of RAES, appears to have been formed solely for the purpose of engaging in RAES trades, and is not reasonably necessary to the efficient functioning of the system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

[2] Joint accounts, and the designated nominee of a member organization, will incur the customary trade match and transaction fees.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Exchange introduced its retail automatic execution system ("RAES") in options on the Standard & Poor's 100 Index ("OEX") in February, 1985. Since then, the daily volume of RAES-executed trades has grown at a substantial rate. At present, only individual market-makers are eligible to participate in the RAES system as contra-brokers. Each market-maker logged onto RAES is assigned RAES trades on a rotating basis.

As originally conceived, RAES was to have been a system utilized chiefly, if not exclusively, by individual market-makers. Recently, however, the noticeable increase in volatility that has characterized the marketplace has discouraged individual participation in RAES by increasing the potential exposure of an individual to substantial, one-sided market movements. At the same time, market-makers have shown tremendous interest in pooling their RAES trading activity, thereby lessening their exposure to the vagaries of the market.

The proposed rule change reflects a careful balancing of the Exchange's desire to open the RAES system to groups of participants, and thereby ensure both the integrity and the continued availability of the system to public customers, with the realistic expectation that certain affirmative obligations may be expected of market-makers who use RAES. As the guidelines make clear, stricter market-making obligations are imposed upon groups than upon individuals, since the sudden departure from the system of a group of participants could have more deleterious consequences to the remaining users of RAES than would the logging off of an individual market-maker.

The Exchange believes that only the quickest possible implementation of these guidelines will enable the Exchange accurately to gauge their efficacy in guaranteeing that the RAES system remains available to public customers in all market conditions.

The Exchange believes that the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder, and in particular section 6(b)(5) of the Act, in that the proposal is designed to improve market efficiency and enhance the market functioning of the automatic execution system utilized at the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 27, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

April 28, 1986.

[FR Doc. 86-10133 Filed 5-5-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23188; File No. SR-Phlx-86-1]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On January 27, 1986, the Philadelphia Stock Exchange, Inc. ("Phlx"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to narrow the bid-ask differentials applicable to individual stock options and index options and change the reference point for applying the differentials from the last preceding transaction to the prevailing bid.

The proposed rule change was noticed in Securities Exchange Act Release No. 22950 (February 26, 1986), 51 FR 7513. No comments were received on the proposed rule change.

Under Phlx's proposd rule change the maximum allowable bid-ask differentals for individual stock options and index options will be narrowed in cases where the prevailing bid does not exceed $3.00.[3] In addition, the Phlx proposal changes the reference point for establishing which differential applies to the prevailing bid rather than the last preceding transaction as required under the existing rule.[4]

In its filing, the Phlx states that the proposed changes will improve price continuity in stock options and index options. In reviewing the propsoed rule change, the Commission generally believes that the narrowing of the bid-ask differentials should allow for tighter markets and improved price continuity. In addition, the change in reference points for the differentials from the last preceding transaction to the prevailing bid does not appear to create any problems. In this regard, we note that the Chicago Board Options Exchange, Inc., ("CBOE") uses the prevailing bid as its reference point for its bid-ask differentials.[5]

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [6] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: April 30, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-10135 Filed 5-5-86; 8:45 am]

BILLING CODE 8010-01-M]

[File No. 22-15218]

Application and Opportunity for Hearing; Trans World Airlines Inc.

May 2, 1986.

Notice is hereby given that Trans World Airlines, Inc. (the "Applicant") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of The Connecticut National Bank, a national banking association ("CNB"), under the Equipment Trust Agreement (the "Equipment Trust Agreement") dated as of February 18, 1986, as amended and supplemented, between CNB and the Applicant is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify CNB from acting as trustee thereunder and under the following other indentures (the "Indentures") between the Applicant and CNB, as trustee: (i) The Equipment Trust Agreement dated as of February 15, 1983, (ii) the Equipment Trust Agreement dated as of April 1, 1983, as amended by Amendment No. 1 dated as of May 25, 1983, (iii) the Equipment Trust Agreement dated as of July 15, 1983, (iv) the Equipment Trust Agreement dated as of August 25, 1983, (v) the Equipment Trust Agreement dated as of September 15, 1983, (vi) The Equipment Trust Agreement dated as of November 15, 1983 and (vii) the Mortgage and Trust Indenture dated as of April 10, 1985.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such Section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides that, with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the same obligor are outstanding, if the obligor shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that the trusteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

(1) The Applicant, a Delaware corporation, sold $209,700,000 aggregate principal amount of Equipment Trust Certificates under the Equipment Trust Agreement in a private placement on February 20, 1986 and $103,000,000 aggregate principal amount of Equipment Trust Certificates under the Equipment Trust Agreement, as amended, in a private placement on March 25, 1986.

(2) Under related Registration Rights Agreements dated February 20, 1986 and March 25, 1986, the Applicant agreed with the purchasers of the Equipment Trust Certificates to file a registration statement pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), and to use its best efforts to have such registration statement declared effective by June 2, 1986. The Applicant intends that, pursuant thereto, the Equipment Trust Certificates will be registered under the Securities Act and the Equipment Trust Agreement will be qualifed under the Act.

(3) As of the date hereof, the Applicant has outstanding $195,123,658

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[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b-4 (1985)

[3] The maximum allowable bid-ask differentials for contracts where the bid is over $3.00 will remain unchanged. The reference point, however, also will be changed for such contracts to the prevailing bid rather than the last preceding transaction price.

[4] The Phlx proposal also eliminates a portion of the rule that currently sets the bid-ask differentials for options series fo more than nine months at twice the amounts stated in the rule. Accordingly, the bid-ask differentials in the rule apply to all series of stock options and index options.

[5] *See* CBOE Rule 8.7.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78 s(b)(2)(1982).

[8] 17 CFR 200.30-3(a)(12)(1985).

aggregate principal amount under the following Indentures, other than the Equipment Trust Agreement, for which CNB is trustee:

(A) $35,159,021 principal amount outstanding, maturing in March 1998, under the Equipment Trust Agreement dated as of February 15, 1983, between CNB and the Applicant, covering one Boeing Model 767–231 Aircraft (United States Registration No. N604 TW);

(B) $25,808,113 principal amount outstanding, maturing in April 1993, under the Equipment Trust Amendment dated as of April 1, 1983, as amended by Amendment No. 1 dated as of May 25, 1983, between CNB and the Applicant, covering one Boeing Model 767–231 Aircraft (United States Registration No. N606 TW);

(C) $24,054,617 principal amount outstanding, maturing in July 1993, under the Equipment Trust Amendment dated as of July 15, 1983, between CNB and the Applicant, covering one Boeing Model 767–231 Aircraft (United States Registration No. N607 TW);

(D) $24,054,617 principal amount outstanding, maturing in August 1993, under the Equipment Trust Agreement dated as of August 25, 1983, between CNB and the Applicant, covering one Boeing Model 767–231 Aircraft (United States Registration No. N609 TW);

(E) $24,054,617 principal amount outstanding, maturing in September 1993, under the Equipment Trust Agreement dated as of September 15, 1983 between CNB and the Applicant, covering one Boeing Model 767–231 Aircraft (United States Registration No. N608 TW);

(F) $25,992,673 principal amount outstanding, maturing in November 1993, under the Equipment Trust Agreement dated as of November 15, 1983 between CNB and the Applicant, covering one Boeing Model 767–231 Aircraft (United States Registration No. N610 TW; and

(G) $36,000,000 principal amount outstanding maturing in May 1995, under the Mortgage and Trust Indenture dated as of April 10, 1985, between CNB as Loan Trustee and the Applicant, relating to one Boeing 747–284–B Aircraft (United States Registration No. N305–TW) and one Boeing 747–131 Aircraft (United States Registration No. N93109).

(4) The Indentures were not qualified under the Act, since the Indentures were exempt from qualification thereunder by reason of Section 304(b) thereof as privately placed securities exempt from registration under the Securities Act.

(5) The Applicant is not in default under any of its obligations with respect to the Equipment Trust Agreement or any of the Indentures.

(6) Such differences as exist between the Equipment Trust Agreement and the other Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify CNB from acting as trustee under the Equipment Trust Agreement or the other Indentures. The Equipment Trust Certificates and the securities issued under each of the Indentures are secured by separate and distinct sets of identified aircraft and engines. A default resulting in the acceleration by CNB of the maturity of the securities issued pursuant to any of the Indentures, or the acceleration by CNB of the maturity of the Equipment Trust Certificates, could trigger a similar default with respect to the Equipment Trust Certificates and the securities issued pursuant to the Indentures. If CNB enforces its security interest under the Equipment Trust Agreement or any of the Indentures, such action would not affect CNB's security interest or its ability to enforce its security interest under the Equipment Trust Agreement or any of the other Indentures. Accordingly, the existence of the several trusteeships should not place CNB in a situation where a potential material conflict of interest could arise.

The Applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested persons may, not later than May 20, 1986, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and in the interest of investors.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secetary.

[FR Doc. 86–10246 Filed 5–5–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 961]

Delegation of Authority No. 120–3; Procurement Executive

By virtue of the authority vested in me by Department of State Delegation of Authority No. 120 (34 FR 18095) and in order to implement the Office of Federal Procurement Policy Act (41 U.S.C. 401 et set.), it is directed as follows:

1. Functions Delegated to the Procurement Executive

I hereby delegate to the Procurement Executive authority to:

a. Prescribe, promulgate and amend the Department's procurement and grant policies, rules and regulations;

b. Review all Department contracts over $100,000 for compliance with law and regulations;

c. Provide advice and guidance, in consultation with the Office of the Legal Adviser as appropriate, to all Department offices and to diplomatic and consular posts on all matters of procurement law and policy;

d. Make determinations and findings or justifications and approvals and take other actions as are deemed consistent with applicable policies, procedures or regulations, with respect to purchases, contracts, grants, leases, sales agreements and other transactions, except where such determinations and findings or justifications and approvals are required by law or regulation to be made by another officer;

e. Select, certify and appoint contracting officers and grant officers, and representatives thereof, by written instrument;

f. Evaluate, monitor and report on the performance of the Department's procurement system as may be required by law, regulation or directive, and certify to the Assistant Secretary for Administration that the Department's procurement system meets approved standards;

g. Develop and maintain a procurement career management program to assure an adequate professional work force;

h. Examine the Department's procurement system, in coordination with the Office of Federal Procurement

Policy, to determine specific areas where government-wide performance standards should be established and applied;

i. Participate in the development of government-wide procurement policies, regulations and standards, and represent the Department on all councils, interagency task forces, working groups, and other bodies concerned with acquisition policy and procedures;

j. Select and designate an independent advocate for competition for Department of State procurements, and provide advice and counsel to such advocate in accordance with the Office of Federal Procurement Policy Act;

2. Re-Delegation

The Procurement Executive is authorized to redelegate to the employees of the Department any of the authorities or functions, delegated herein, except that the certification responsibility under section 1.f may not be redelegated. Any redelegation may include authority for further redelegation.

3. General Provisions

a. Any official actions within the scope of this delegation taken prior to the effective date hereof by officers duly authorized are hereby continued in effect, according to their terms, until modified, revoked, or superseded by action of the Procurement Executive or other officer of the Department acting under authority of this delegation.

b. All authorities delegated herein shall be exercised in accordance with the applicable limitations and requirements of the Federal Acquisition Regulation (48 CFR Chapter 1) and other Federal procurement laws and regulations.

Donald J. Bouchard,

Assistant Secretary for Administration.

[FR Doc. 86-10057 Filed 5-5-86; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending April 25, 1986.

Answers may be filed within 21 Days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
Apr. 22, 1986	43975, R-1—R-16.	Members of International Air Transport Association	Canada-Europe fares	May 1, 1986
Apr. 22, 1986	43976	Members of International Air Transport Association	Increase in Zaire fares	May 1, 1986
Apr. 22, 1986	43977	Members of International Air Transport Association	North-Atlantic cargo rates	May 1, 1986
Apr. 23, 1986	43980	Members of International Air Transport Association	Videotex systems	Oct. 1, 1986
Apr. 23, 1986	43981, R-1—R-19.	Members of International Air Transport Association	TC123 fares—No. Atlantic	May 1, 1986
Apr. 23, 1986	43982	Members of International Air Transport Association	Cargo rates Europe-So. Pacific	Apr. 1, 1986
Apr. 23, 1986	43983	Members of International Air Transport Association	Hungary Canada apex fares	May 1, 1986
Apr. 23, 1986	43984	Members of International Air Transport Association	Mileage manual revision	May 1, 1986
Apr. 23, 1986	43985	Members of International Air Transport Association	UK proportional fares—Mid Atlantic	June 15, 1986
Apr. 25, 1986	43989, R-1—R-20.	Members of International Air Transport Association	North Atlantic-Africa fare	May 1, 1986
Apr. 25, 1986	43990	Members of International Air Transport Association	Canada-Finland apex fares	May 15, 1986
Apr. 25, 1986	43991, R-1 and R-2.	Members of International Air Transport Association	Mexico-Mideast/Israel baggage	May 1, 1986

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-10121 Filed 5-5-86; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43687]

Denver-London Route Proceeding

This proceeding was instituted by Order 85-12-70 issued December 26, 1985. Pursuant to section 302.1753(a) of the Department's procedural regulations in 14 CFR the 136-day period for service of an initial decision by the Chief Judge would have expired on May 12, 1986. However, several delays in the procedural schedule have occurred within the meaning of section 401(c)(2) of the Federal Aviation Act. Accordingly, in compliance with section 302.1753(a)(2) of the regulations, this notice extends the due date for service of the initial decision for a period of 63 days, to July 14, 1986.

Entered this 30th day of April, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86-10122 Filed 5-5-86; 8:45 am]

BILLING CODE 4910-62-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 87
Tuesday, May 6, 1986

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

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time), Monday, May 12, 1986.

CHANGE IN THE MEETING:

Change from: Discussion of Subpoena Determinations
Change to: Discussion of Certain Commissioners' Charges

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: May 1, 1986.

Barbara Parris,

Policy Analyst.

This Notice Issued May 1, 1986.

[FR Doc. 86–10192 Filed 5–2–86; 12:36 pm]

BILLING CODE 6750–06–M

2

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, May 13, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC, 20594.

STATUS: The first two items will be open to the public; the last item will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Special Investigation:* Failure of Cargo Tank Transporting Hazardous Waste on the Washington DC Beltway, I–95, in Fairfax, Virginia, August 12, 1985.
2. *Railroad Accident Report:* Head On Collision of Two Burlington Northern Railroad Company Trains Extra 6311 West and Extra 6575 East near Westminster, Colorado, August 2, 1985.
3. *Opinion and Order:* Administrator v. Vance, Docket SE–6548; disposition of respondent's appeal.

FOR MORE INFORMATION, CONTACT: Catherine T. Kaputa, (202) 382–6525.

Catherine T. Kaputa,

Federal Register Liaison Officer.

May 1, 1986.

[FR Doc. 86–10144 Filed 5–2–86; 9:17 am]

BILLING CODE 7533–01–M

federal register

Tuesday
May 6, 1986

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 400, 405, 412, and 489

Medicare Program; Fiscal Year 1986 Changes to the Inpatient Hospital Prospective Payment System; Interim Final Rule With Comment Period

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 412, and 489

[BERC-385-IFC]

Medicare Program; Fiscal Year 1986 Changes to the Inpatient Hospital Prospective Payment System

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule sets forth revisions to the Medicare inpatient hospital prospective payment system. This rule is needed to implement those portions of sections 9101 through 9105 and 9112 of the Consolidated Omnibus Budget Reconciliation Act of 1985 having an effective date of May 1, 1986 or earlier. The changes required by this legislation affect the fiscal year 1986 prospective payment rates; the rate-of-increase limits (target amounts) for hospitals excluded from the prospective payment system; the length of the transition period and the method of payment; application of the hospital wage index; payment for the indirect costs of medical education; and payments for hospitals that serve a disproportionate share of low-income patients.

DATES: Effective date: With certain exceptions, this interim final rule is effective on May 1, 1986. We refer the reader to section VII.B. of this preamble for a detailed discussion of effective dates.

Comment Date: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on June 5, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-385-IFC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-285-IFC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

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

SUPPLEMENTARY INFORMATION:

I. Background

On September 3, 1985, we published a final rule in the **Federal Register** (50 FR 35646) that made the following changes to the Medicare inpatient hospital prospective payment system:

- We adjusted the diagnosis-related groups (DRG) classifications and weighting factors for discharges occurring on or after October 1, 1985.
- For cost reporting periods beginning on or after October 1, 1983, we adopted a new hospital wage index that was based on the HCFA survey of hospital wages.
- We made several changes to the regulations in 42 CFR Parts 405 and 412 concerning—

—The rate-of-increase limits for hospitals excluded from the prospective payment system;
—Payments for indirect costs of medical education;
—Limitations on charges to beneficiaries for hospitals paid under State reimbursement control systems or demonstration projects;
—The exclusion of alcohol/drug hospitals and units;
—Review of cost outliers; and
—Qualifying criteria for referral centers.

- We established the FY 1986 Federal rates by—

—Restandardizing the base year cost data to reflect the new wage index;
—Grouping the standardized costs per case for urban/rural averages for the nine census regions and the nation, reflecting the most recent geopgraphic designations;
—Updating the standardized amounts by zero percent; and
—Applying the same adjustment factors for nonphysician anesthetist costs and outlier payments as were used for FY 1985.

- We did not increase either the hospital-specific rates for hospitals under the prospective payment system or the rate-of-increase limits for hospitals excluded from the prospective payment system.

With certain exceptions, the September 3 final rule was to be effective on October 1, 1985.

On September 30, 1985, the Emergency Extension Act of 1985 (Pub. L. 99-107) was enacted. Section 5 of Pub. L. 99-107 extended through November 14, 1985 the Medicare payment rates for inpatient hospital services that were in effect on September 30, 1985. A result of this delay was that certain changes in the rules that govern Medicare payment for inpatient hospital services, which would have become effective on October 1, 1985, for FY 1986 as a result of the September 3, 1985 final rule, were postponed initially until November 15, 1985. The affected changes concerned the rules for determining payment rates for hospitals covered by the prospective payment system and the rate-of-increase limits for hospitals excluded from that system. In addition, the amendments to 42 CFR 412.118(f)(2) and (f)(3) concerning determination of indirect medical education costs that were scheduled to be effective on October 1, 1985 under the September 3, 1985 final rule were also postponed until November 15, 1985. We announced this postponement in a notice in the **Federal Register** published on November 12, 1985 (50 FR 46651).

Since publication of that notice, several more laws were enacted that further delayed the implementation of revised Medicare inpatient hospital services payment rules as follows:

- Pub. L. 99-155, enacted December 14, 1985, extended the delay through December 14, 1985.
- Pub. L. 99-181, enacted December 13, 1985, extended the delay through December 18, 1985.
- Pub. L. 99-189, enacted December 18, 1985, extended the delay through December 19, 1985.
- Pub. L. 99-201 enacted December 23, 1985, extended the delay through March 14, 1986.

To announce the first of these extensions of the delay, we published a notice in the **Federal Register**, on December 6, 1985 (50 FR 49930); the remaining extensions were described in a notice published February 3, 1986 (51 FR 4166). The result of these extensions is that, for the period of the extension, we continued to pay for hospital discharges under the rules that were in effect in FY 1985. Thus, we did not implement the following changes that were included in the September 3, 1985 final rule:

- Revised DRG classifications and weights.
- Revised wage index.
- Revised adjusted standardized amounts.
- Revised regulations concerning exclusions on the count of interns and

residents assigned to outpatient and ancillary department of a hospital to be used in determining the cost of indirect medical education.

II. New Legislation

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) was enacted. Sections 9101, 9102, 9104, and 9105 of Pub. L. 99–272 made the following amendments, which concern payment to hospitals in FY 1986, to section 1886 of the Social Security Act:

- The FY 1985 inpatient hospital payment rates are extended through April 30, 1986.
- For discharges occurring on or after May 1, 1986 and before October 1, 1986, the standardized amounts for prospective payment hospitals are increased by one-half of one percent.
- For cost reporting periods beginning in FY 1986, the hospital-specific rates are increased by zero percent for the first seven months of a hospital's cost reporting period and by one-half of one percent for the remaining five months of the cost reporting period.
- For cost reporting periods beginning in FY 1986, the rate-of-increase limits for hospitals excluded from the prospective payment system are increased by five-twenty-fourths of one percent.
- Except for hospitals in the State of Oregon as discussed in greater detail below, the prospective payment system transition period is extended through FY 1987, thus delaying the transition to full Federal rates for one year.

—The national/regional blend of the Federal portion remains at 25 percent national and 75 percent regional through FY 1986.

—The hospital-specific and Federal portion percentages for cost reporting periods beginning in FY 1986 remain at 50/50 for the first seven months of the cost reporting period and change to 45 percent of the hospital-specific portion and 55 percent of the Federal portion for the remaining five months of the hospital's cost reporting period.

- For discharges occurring on or after May 1, 1986 and before October 1, 1988, the indirect teaching adjustment is changed from 11.59 percent, paid on a linear basis (that is, for each one-tenth of the hospital's intern and resident to bed ratio), to 8.1 percent, paid on a variable or curvilinear basis. In addition, interns and residents assigned to outpatient departments of a hospital will continue to be counted for purposes of determining the indirect teaching adjustment.
- For discharges occurring on or after May 1, 1986, and before October 1, 1988, an additional payment will be made to each prospective payment hospital that serves a disproportionate share of low-income patients (as defined in the statute).

Section 9103 of Pub. L. 99–272 amends section 2316(b) of the Deficit Reduction Act of 1984 (Pub. L. 98–369) to specify that the hospital wage index based on the HCFA survey, which was published in the September 3, 1985 final rule, must be used to determine payment for discharges occurring on or after May 1, 1986.

Section 9112 of Pub. L. 99–272 amends section 602(k) of the Social Security Amendments of 1983 (Pub. L. 98–21) to provide that—

- For hospitals that have a waiver under section 602(k) of Pub. L. 98–21, the payment for their indirect costs of medical education is to be made as if the hospitals were receiving under Medicare Part A (Hospital Insurance) all the payments that are made under Medicare Part B (Supplementary Medical Insurance) because of the waiver; and
- Any Part B payments made to suppliers under a waiver are to equal 100 percent of the reasonable charge for the service and, in order to retain its waiver, the hospital must assure us that the supplier will accept that payment as payment in full.

These provisions are discussed in detail below.

III. FY 1986 Changes to the Prospective Payment System

A. Payment for Inpatient Hospital Services

For the period of the extension described above, payment to hospitals under the prospective payment system is made under the payment rates and rules in effect on September 30, 1985. Thus, the adjusted standardized amounts and hospital-specific rates and the list of DRG weights that were set forth in the August 31, 1984 final rule (49 FR 34728) remained in effect for discharges occurring in the extension period. Similarly, for hospitals that are not subject to the prospective payment system, each hospital's target amount for its cost reporting period beginning in FY 1985 has been carried forward for its next cost reporting period.

Section 9101(a) of Pub. L. 99–272 amends section 5(c) of Pub. L. 99–107 to extend the FY 1985 inpatient hospital prospective payment rates through April 30, 1986. Therefore, the DRG classification changes and recalibrated DRG weights that were set forth in the September 3, 1985 final rule (50 FR 35722) are effective for discharges occurring on or after May 1, 1986.

Section 9101(b) of Pub. L. 99–272 amends section 1886(b)(3)(B) of the Act to provide that the adjusted standardized rates, the hospital-specific rates, and the target rate-of-increase limits are increased by one-half of one percent for cost reporting periods beginning in or discharges occurring in FY 1986, as applicable. Section 9101(e) of the law further specifies the following:

- For prospective payment hospitals, the update to the adjusted standardized rates of one-half of one percent is effective for discharges occurring on or after May 1, 1986. The hospital-specific rates are increased by zero percent for discharges occurring during the first seven months of a hospital's cost reporting period beginning in FY 1986 and by one-half of one percent for discharges occurring during the remaining five months of that cost reporting period.
- For hospitals excluded from the prospective payment system, the hospital's target amount for cost reporting periods beginning in FY 1986 is the previous year's target amount increased by five-twenty-fourths of one percent (that is, an increase of one-half of one percent for five months of the 12-month cost reporting period.
- For purposes of determining update percentages for discharges occurring on or after October 1, 1986 or cost reporting periods beginning on or after October 1, 1986, as appropriate, the applicable percentage increase for both prospective payment hospitals and excluded hospitals, for discharges occurring in FY 1986 or cost reporting periods beginning in FY 1986, as appropriate, is deemed to have been one-half of one percent.

In accordance with the provisions of section 9101(b) and (e) of Pub. L. 99–272, the adjusted standardized amounts that were published in the September 3, 1985 final rule (which reflected a zero percent update) are updated by one-half of one percent effective for discharges on or after May 1, 1986. The revised standardized amounts are set forth in Table 1, below.

The amendment made to section 1886(b)(3)(B) of the Act by section 9101(b) of Pub. L. 99–272 also sets forth the methodology the Secretary is to use to update the prospective payment adjusted standardized amounts, the hospital-specific rates and the target rate-of-increase limits for excluded hospitals for discharges occurring or cost reporting periods beginning on or after October 1, 1986, as applicable. The provisions are as follows:

- Beginning with FY 1987, the standardized amounts are to be updated

by the percentage determined by the Secretary under section 1886(e)(4) of the Act; that is, the percentage determined by the Secretary that takes into account amounts the Secretary believes are necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. For FY 1987 and FY 1988, this percentage cannot exceed the percentage change in the hospital market basket.

- For cost reporting periods beginning on or after October 1, 1986, the hospital-specific rates are to be updated by the percentage determined by the Secretary under section 1886(e)(4) of the Act. As with the standardized amounts, the update percentage for cost reporting periods beginning in FY 1987 and FY 1988 is limited by the percentage change in the market basket.
- Starting with cost reporting periods beginning on or after October 1, 1986, the target rate-of-increase limits are to be updated by the percentage determined by the Secretary under section 1886(e)(4) of the Act. Once again, the rate-of-increase update percentage for cost reporting periods beginning in FY 1987 and FY 1988 is limited by the percentage change in the hospital market basket.

We are revising §§ 405.463, 412.63, and 412.73 to implement sections 9101 (b) and (e) of Pub. L. 99–272.

B. Extension of the Prospective Payment System Transition Period

Section 9102 of Pub. L. 99–272 revises sections 1886(b)(1) (A), (C), and (D) of the Act to extend the three-year transition to a fully national prospective payment system by one additional year. During the transition period, payment to hospitals is based on a combination of the Federal prospective payment rates and hospital-specific rates. The Federal and hospital-specific portions change with the hospital's cost reporting period. In addition, during that period, the Federal rate is a combination of regional and national rates, the proportions of which change with the Federal fiscal year. The two tables set forth below demonstrate the composition of a hospital's payment rate prior to the enactment of Pub. L. 99–272.

SUMMARY OF HOSPITAL-SPECIFIC AND FEDERAL PERCENTAGES

Cost reporting period beginning on or after	Hospital-specific percentage	Federal percentage
Oct. 1, 1983	75	25
Oct. 1, 1984	50	50
Oct. 1, 1985	25	75
Oct. 1, 1986	0	100

SUMMARY OF REGIONAL AND NATIONAL PERCENTAGES OF THE FEDERAL PORTION

Federal fiscal year beginning	Regional percentage	National percentage
Oct. 1, 1983	100	0
Oct. 1, 1984	75	25
Oct. 1, 1985	50	50
Oct. 1, 1986	0	100

The provisions concerning the transition period are set forth in regulations at § 412.70.

Section 9102 of Pub. L 99–272 extends the transition by making the following changes:

- For cost reporting periods beginning on or after October 1, 1985 and before October 1, 1986, the blend of hospital-specific and Federal portions is 50 percent hospital-specific and 50 percent Federal for the first seven months of the cost reporting period and 45 percent hospital-specific and 55 percent Federal for the remaining five months of the cost reporting period. For cost reporting periods beginning in FY 1987, the blend is 25 percent hospital-specific and 75 percent Federal. Starting with cost reporting periods beginning in FY 1988, the payment rate is based exclusively on the Federal portion.
- For discharges occurring in FY 1986, the Federal portion is made up of 25 percent national and 75 percent regional. For discharges occurring in FY 1987, the combined rate is 50 percent national and 50 percent regional. The Federal portion is based exclusively on the national rate beginning in FY 1988.

Therefore, the revised transition prospective payment rates are determined as follows:

SUMMARY OF HOSPITAL-SPECIFIC AND FEDERAL PERCENTAGES

Cost reporting period beginning on or after	Hospital-specific percentage	Federal percentage
Oct. 1, 1983	75	25
Oct. 1, 1984	50	50
Oct. 1, 1985:		
—The first seven months of the cost reporting period	50	50
—The remaining five months of the cost reporting period	45	55
Oct. 1, 1986	25	75
Oct. 1, 1987	0	100

SUMMARY OF REGIONAL AND NATIONAL PERCENTAGES OF THE FEDERAL PORTION

Federal fiscal year beginning	Regional percentage	National percentage
Oct. 1, 1983	100	0
Oct. 1, 1984	75	25
Oct. 1, 1985	75	25
Oct. 1, 1986	50	50
Oct. 1, 1987	0	100

We are revising the following sections to reflect the change in the transition period: §§ 412.1, 412.70, 412.80, 412.82, and 412.115.

Under the provisions set forth in section 9102 (d)(4) of Pub. L. 99–272, all hospitals subject to the prospective payment system that are located in the State of Oregon are excepted from the changes made to the transition period by sections 9102(a), (b), (c), and (d)(1) through (d)(3) of Pub. L. 99–272. Section 9102(d)(4) of Pub. L. 99–272 further specifies that for those hospitals located in Oregon, the following applies:

- *Hospital-specific/Federal blend.* Section 9102(d)(4)(B) states that for the first seven months of a cost reporting period beginning in FY 1986, the payment rate consists of a blend of 50 percent of the hospital-specific rate and 50 percent of the Federal rate. For the remaining five months of a cost reporting period beginning in FY 1986, the blend is 25 percent of the hospital-specific rate and 75 percent of the Federal rate. For cost reporting periods beginning on or after October 1, 1986, the payment rate is comprised solely of the Federal rate.
- *Regional/National blend of Federal rate.* For discharges occurring on or after October 1, 1985 and before May 1, 1986, section 9102(d)(4)(C) provides that the Federal rate consists of 75 percent of the regional rate and 25 percent of the national rate. In the absence of a special provision applicable to Oregon beginning May 1, 1986, the provisions of section 1886(d)(1)(D) of the Act would apply.

However, section 1886(d)(1)(D) of the Act applies in its form prior to the enactment of Pub. L. 99–272 since section 9102(d)(4)(A) makes the amendments of that law to section 1886(d)(1)(D) of the Act inapplicable to Oregon. Therefore, for discharges occurring on or after May 1, 1986 and before October 1, 1986, the Federal rate consists of 50 percent of the regional rate and 50 percent of the national rate. For discharges occurring on or after October 1, 1986, the Federal rate is comprised solely of the national rate.

C. Hospital Wage Index

Section 1886(d)(2)(C)(ii) of the Act requires that we standardize the average cost per case of each hospital used to develop the separate urban and rural standardized amounts for differences in wage levels. Section 1886(d)(2)(H) of the Act requires that the standardized amounts be adjusted for hospital area wage levels as part of the methodology for determining prospective payments to hospitals. To

fulfill both of these requirements, we constructed a wage index to eliminate variations in the average cost per case.

For purposes of determining the prospective payments to hospitals in FY 1984 and FY 1985, we used calendar year 1981 hospital wage and employment data obtained from the Bureau of Labor Statistics' (BLS's) ES 202 Employment, Wages and Contributions file for hospital workers to construct the wage index. However, the September 3, 1985 final rule set forth a revised hospital wage index that is based on an HCFA survey of hospital wage and salary data as well as data on paid hours in hospitals. This wage index was developed in an attempt to overcome the limitation of the BLS data with regard to full-time and part-time employment.

This revised wage index was not implemented because of the provisions of the Emergency Extension Act of 1985 (Pub. L. 99–107) and the succeeding amendments to that Act. Section 9103(a) of Pub. L. 99–272 specifies that, for discharges occurring on or after May 1, 1986, prospective payments to hospitals are to be adjusted to reflect the changes made in the September 3, 1985 final rule relating to the hospital wage index. The retroactive application of the revised wage index to cost reporting periods beginning on or after October 1, 1983 is repealed.

We are making adjustments to the wage index published in the September 3, 1985 final rule to correct data errors. These changes are similar to those that we made between the publication of the June 10, 1985 proposed rule (50 FR 24366) and the September 3, 1985 final rule, which are described in the final rule (50 FR 35663). By making these corrections, we can ensure that the wage index used to determine payment for discharges occurring on or after May 1, 1986 is as accurate as possible. The wage index is set forth in Tables 4a and 4b, below.

D. Payment for Medical Education

1. Indirect Costs of Medical Education

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals receive an additional payment for the indirect costs of medical education computed in the same manner as the adjustment for those costs under regulations in effect as of January 1, 1983. Under those regulations, we provided that the indirect costs of medical education incurred by teaching hospitals are the increased operating costs (that is, patient care costs) that are associated with approved intern and resident programs. These increased costs may reflect a number of factors; for example, an increase in the number of tests and procedures ordered by interns and residents relative to the number ordered by more experienced physicians or the need of hospitals with teaching programs to maintain more detailed medical records.

Because the indirect costs of medical education are defined in terms of increased operating costs, they are not separately identifiable on the cost report or in other financial or accounting records.

Rather, these incremental costs have been statistically estimated as function of teaching intensity, and a proxy measure (the hospital's ratio of the number of interns and residents to the number of beds) has been used to measure teaching intensity. The coefficient describing this statistical relationship has been expressed as a percentage and applied as the indirect medical eduction factor. This factor was first used as an adjustment to the routine operating cost limits and the total operating cost limits under the reasonable cost reimbursement system. The regulations governing this matter under the prospective payment system are found at § 412.118.

Currently, § 412.118(d) provides that each hospital's indirect medical education payment is determined by multiplying the following three factors:

(1) Total DRG revenue based on the Federal rates.

(2) A factor for each ten percent increment above zero in the hospital's ratio of full-time equivalent interns and residents to beds.

(3) An education adjustment factor, expressed as a percentage, that represents double the statistically-estimated effect of teaching activity on operating costs. The current adjustment factor is 11.59 percent.

As a part of the September 3, 1985 final rule, we revised § 412.118, effective for cost reporting periods beginning on or after October 1, 1984, to—

- Change the method used to determine the number of beds in a hospital for purposes of counting interns and residents;
- Provide for an annual report of the count, by specialty, of the number of interns and residents in each hospital on September 1 or the first business day after September 1 if that day falls on a weekend or Federal holiday (with an additional count on April 15, 1985 for hospitals with cost reporting periods beginning on or after October 1, 1984 and before July 1, 1985);
- Count as full-time all interns and residents assigned to the hospital on September 1 (or April 15, 1985, if applicable) except for those individuals splitting their time between prospective payment areas and one or more areas excluded from the prospective payment system or spending all their time in excluded areas; and
- Provide for intermediary reviews of hospital documentation to verify the hospital's intern and resident-to-bed ratio.

The following revisions (set forth at § 412.118(f)(2) and (3)) were to be effective for cost reporting periods beginning on or after October 1, 1985:

- Interns and residents assigned to the outpatient department of the hospital on the day the count of interns and residents is made are not counted as full-time equivalents. Only the percentage of time that these interns and residents spend in the portion of the hospital subject to the prospective payment system on the day of the count is used in determining the indirect medical education adjustment.
- The number of interns and residents assigned to ancillary departments of the hospital are apportioned between inpatient and outpatient settings based on the ratios of each ancillary department's inpatient and outpatient charges, respectively, to total department charges. Only the number of full-time equivalent interns and residents thus determined to be furnishing inpatient services is included in the count.

These last two changes did not become effective on October 1, 1985 because of the enactment of Pub. L. 99–107 and the amendment to that law, as we discussed earlier.

Section 9104(a) of Pub. L. 99–272 revises section 1886(d)(5)(B) of the Act of reduce the education adjustment factor used to determine the indirect medical education payment from 11.59 percent to 8.1 percent for discharges occurring on or after May 1, 1986 and before October 1, 1988. For discharges occurring on or after October 1, 1988, the adjustment factor is equal to 8.7 percent. In addition to being reduced, the adjustment factor is no longer applied on a linear basis, but rather on a curvilinear or variable basis. An adjustment made on a curvilinear basis reflects a nonlinear cost relationship; that is, each absolute increment in a hospital's ratio of interns and residents to beds does not result in an equal proportional increase in costs. Therefore, the adjustment factors are only approximately 8.1 percent and 8.7 percent.

We are revising § 412.118 to provide that for discharges occurring on or after May 1, 1986 and before October 1, 1988, the indirect medical education factor equals the following:

$$2 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.045} - 1\right]$$

For Example: A hospital has an intern and resident to bed ratio of .2. Its adjustment factor is computed in the following way:

$2 \times [(1+.2)^{.405} - 1] = 2 \times [.07663] = .15327$

This hospital's indirect medical education adjustment factor is .1533. To determine the hospital's additional payment, this factor is multiplied by the hospital's total DRG revenue based on the DRG-adjusted prospective payment rates (for transition period payments, the Federal portion of the hospital's payment) including outlier payments but excluding any other additional payments such as the payment for hospitals that serve a disproportionate share of low-income patients as discussed below.

For discharges occurring on or after October 1, 1988, that factor equals the following:

$$1.5 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.5795} - 1\right]$$

On February 26, 1986, we published a notice of proposed rulemaking in the **Federal Register** (51 FR 6755) to revise the application of the formula used to calculate payment for the indirect costs of medical education for prospective payment hospitals. We proposed to apply the education adjustment factor of 11.59 on a curvilinear basis.

Since the provisions of section 9104 of Pub. L. 99–272 supersede that proposal, we are withdrawing it from consideration.

Section 9104(a) of Pub. L. 99–272 also amended section 1886(d)(5)(B) of the Act to provide that, for discharges occurring on or after May 1, 1986, interns and residents assigned to outpatient departments of a hospital are included in the count of interns and residents for the purpose of determining the indirect medical education adjustment factor. Thus, we are deleting from the regulations the changes we made to § 412.118(f) in the September 3, 1985 final rule concerning the exclusion from the count of interns and residents of those individuals who are assigned to outpatient departments or are furnishing outpatient services in ancillary departments. Because of the provisions of Pub. L. 99–107, the changes we made to § 412.188(f) never became effective.

2. Direct Costs of Medical Education

We note here that Pub. L. 99–272 changes the way Medicare pays for the direct costs of medical education. Under section 1886(a)(4) of the Act, direct costs of medical education are excluded from the definition of inpatient operating costs that are covered by the prospective payment system. Thus, the direct costs of approved medical education programs (for example, salaries for interns and residents and overhead costs) are not included in hospital-specific, regional, or national payment rates to hospitals subject to the prospective payment system, but are reimbursed on a reasonable cost basis. The provisions governing reimbursement for the services of interns and residents appear at section 1832(a)(2)(B)(i) and 1861(b)(6) of the Act.

On July 5, 1985, we published a final rule in the **Federal Register** (50 FR 27722) that placed a one-year limit on the amount of reimbursement for providers for their direct costs of approved medical eduction activities for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986. Section 9202 of Pub. L. 99–272 specifies a different approach to reimbursement of direct medical education costs starting with cost reporting periods beginning on or after July 1, 1985. The provisions of this section of the law supersede the provisions set forth in the July 5, 1985 final rule, thus making that rule no longer effective. We plan to publish revised regulations to implement section 9202 of Pub. L. 99–272 in the near future.

E. Payments for Hospitals That Serve a Disproportionate Share of Low-Income Patients

Section 1886(d)(5)(C)(i) of the Act authorizes the Secretary to make adjustments to the prospective payment rates to take into account the special needs of certain classes of hospitals, including public or other hospitals that serve a significantly disproportionate number of low-income patients or Medicare Part A beneficiaries. We had not made special provisions for these hospitals in the Medicare regulations because, based on our past analyses (which are described in several **Federal Register** publications at 47 FR 43285, 48 FR 39416, 48 FR 39783, 49 FR 276–277, 50 FR 24384–24385 and 50 FR 35685–35686), we believed that there had not been sufficient evidence to demonstrate that an adjustment is warranted.

Section 9105 of Pub. L. 99–272 adds a new section 1886(d)(5)(F) to the Act to require that we make an additional payment for hospitals that serve a disproportionate share of low-income patients. Section 1886(d)(5)(F)(i) of the Act provides that for discharges occurring on or after May 1, 1986 and before October 1, 1988, an additional payment must be made for each prospective payment must be made for each prospective payment hospital that meets one of the following criteria:

- During the hospital's cost reporting period, the hospital has a disproportionate patient percentage that is at least equal to—

—15 percent if the hospital is located in an urban area and has 100 or more beds;

—40 percent, if the hospital is located in an urban area and has fewer than 100 beds; or

—45 percent if the hospital is located in an rural area. (Sections 1886(d)(5)(F)(i)(I) and (v) of the Act).

- The hospital is located in an urban area, has 100 or more beds, and can demonstrate that, during its cost reporting period, more than 30 percent of its total inpatient care revenues is derived from State and local government payments for indigent care furnished to patients not covered by Medicare or Medicaid. (Section 1886(d)(5)(F)(i)(II) of the Act).

For purposes of meeting the latter criterion, it is incumbent upon a hospital to demonstrate that more than 30 percent of its total inpatient care revenues are from State and local government sources and that these revenues are specifically earmarked for the care of indigents (that is, none of that money may be used for any purposes other than indigent care). The following are among the types of care that are not to be included by the hospital as indigent care:

- Free care furnished to satisfy the hospital's Hill-Burton obligation.
- Free care or care furnished at reduced rates made available by the hospital to its employees or by a government hospital to any category of public employees.
- Funds furnished to the hospital to cover general operating deficits.

For purposes of determining a hospital's bed size, we are using the same definition that is currently used for determining number of beds for purposes of calculating the indirect medical education adjustment (§ 412.118(b)). That is, the number of beds in a hospital is determined by counting the number of available bed days during the hospital's cost reporting period, not including beds assigned to newborns, custodial care, and excluded distinct part hospital units, and dividing that number by the number of days in the cost reporting period.

Section 1886(d)(5)(F)(vi) states that the term "disproportionate patient percentage," which is used in the criterion implementing section 1886(d)(5)(F)(i)(I) and (v) of the Act, which is described above, means the sum of the following two fractions, which is expressed as a percentage:

1. Patient days of those patients entitled to both Medicare Part A and Supplemental Security Income (SSI) (excluding *those patients receiving State supplementation only)*

Patient days of those patients entitled to Medicare Part A

2. Patient days of those patients entitled to *Medicaid but not to Medicare Part A*

Total number of patient days

The number of patient days of those patients entitled to both Medicare Part A and SSI will be determined by matching data from the Medicare Part A Tape Bill (PATBILL) file with the Social Security Administration's (SSA's) SSI file. This match will be done at least annually and will involve a match of the individuals who are SSI recipients for each month during the Federal fiscal year in which the hospital's cost reporting period begins with the Medicare Part A beneficiaries who received inpatient hospital services during the same month. Thus, if a Medicare beneficiary is eligible for SSI benefits (excluding State supplementation only) during a month in which the beneficiary is a patient in the hospital, the covered Medicare Part A inpatient days of hospitalization in that month will be counted for the purpose of determining the hospital's disproportionate patient percentage. The match of SSI eligibility records to Medicare inpatient hospital days for a hospital will consist of counting the days in which Medicare inpatient hospital services are furnished during each month to patients entitled to both Medicare Part A and SSI, summing those days, and dividing by the total number of days for which Medicare inpatient hospital services are furnished to all Medicare Part A beneficiaries in the hospital.

Although section 1886(d)(5)(F)(vi)(I) of the Act specifies that the match is done on a cost reporting period basis, we believe that matching Social Security numbers on a Federal fiscal year basis is the most feasible approach. A monthly match of SSI eligibility files to Medicare hospital records would be administratively more cumbersome and costly and could not be accomplished in a timely manner. Relying on Medicare billing records for the Federal fiscal year rather than the hospital cost reporting period avoids the problem of billing lag at the end of the cost reporting period. We do not believe that there are likely to be significant fluctuations from one year to the next in the percentage of patients served by the hospital who are dually entitled to Medicare Part A and SSI. Consequently, the percentage for a hospital's own experience during the Federal fiscal year should be reasonably close to the percentage specific to the hospital's cost reporting period.

However, we are affording all hospitals the option to determine their number of patient days of those dually entitled to Medicare Part A and SSI for their own cost reporting periods. A hospital that avails itself of this option must furnish to its fiscal intermediary, in a manner and format to be prescribed by HCFA, data on its Medicare patients for its cost reporting period. These data will then be matched by SSA to determine those patients dually entitled to Medicare and SSI for the hospital's cost reporting period. The full cost of this process, including the cost of verification by SSA, will be borne by the hospital.

The number of patient days of those patients entitled to Medicaid but not to Medicare Part A will be determined by the hospital's Medicare fiscal intermediary based on Medicaid statistical data reported on the hospital's Medicare cost report. Total Medicaid inpatient days will include all covered days attributable to Medicaid patients including any inpatient days for Medicaid patients who are members of a health maintenance organization.

Section 1886(d)(5)(F)(vi)(II) of the Act describes Medicaid patient days at those". . . which consist of patients who (for such days) were eligible for medical assistance under a State plan approved under title XIX . . . ." Therefore, Medicaid covered days will include only those days for which benefits are payable under title XIX. Any day of a Medicaid patient's hospital stay that is not payable by the Medicaid program will not be counted as a Medicaid patient day since the patient is not considered eligible for Medicaid coverage on those days. For example, if a patient is hospitalized for 15 days and is eligible for Medicaid benefits for 10 of those days, only the 10 covered days will be considered Medicaid patient days for purposes of determining a hospital's disproportionate patient percentage.

The process we will use for making payments to hospitals that serve a disporprotionate share of low-income patients will be similar to the process we use to make the additional payment for the indirect medical education costs; that is, we will make interim payments based on the latest available data subject to a year-end settlement on a cost reporting period basis. For purposes of making these interim payments, the initial determination of a hospital's eligibility for this payment will be made by the hospital's Medicare fiscal intermediary based on Medicaid statistical data as reported on the hospital's most recent cost report and the SSI and Medicare data to be supplied by HCFA central office. If a hospital disagrees with the intermediary's determination of its Medicaid patient days, it will be the hospital's responsibility to demonstrate to the intermediary that the Medicaid statistics reported on its cost report are incorrect or were improperly applied. Medicaid data submitted by the hospital, whether on the cost report or furnished subsequently, are subject to intermediary audit to ensure their accuracy.

Sections 1886(d)(5)(f) (ii) and (iv) of the Act specify that the additional payment adjustment for hospitals that meet the disproportionate patient percentage criterion (section 1886(d)(5)(F)(i)(I) of the Act) is determined as follows:

- For urban hospitals with 100 or more beds, the hospital's total DRG revenue (as defined below) is increased by 2.5 percent plus one-half the difference between the hospital's percentage of low-income patients and 15 percent, up to a maximum of 15 percent; that is, the disproportionate share adjustment factor is the lesser of 15 percent or $(P-.15)(.5)+.025$, where P equals the hospital's disproportionate patient percentage expressed as a decimal.
- For urban hospitals with fewer than 100 beds, the hospital's total DRG revenue is increased by five percent.

• For rural hospitals the hospital's total DRG revenue is increased by four percent.

As specified in sections 1886(d)(5)(F)(ii) and (iii) of the Act, for those hospitals that meet the indigent care revenue criterion (section 1886(d)(5)(F)(i)(II) of the Act), the payment adjustment is determined by increasing the hospital's total DRG revenue by 15 percent. A hospital's total DRG revenue is the revenue based on DRG-adjusted prospective payment rates (for transition period payments, the Federal portion of the hospital's payment rates) including outlier payments but excluding any other additional payments such as the indirect medical education payment.

The provisions for adjusting the prospective payment rates for hospitals serving a disproportionate share of low-income patients are set forth in regulations at a new §412.106.

F. Hospitals that Qualify for Waiver of Requirements Concerning Part A Billing

Section 602(k) of Pub. L. 98–21 authorizes a temporary waiver, in certain circumstances, of the requirement, set forth in sections 1862(a)(14) and 1866(a)(1)(H) of the Act, that hospitals bill for all nonphysician inpatient hospital services under Medicare Part A. This waiver authority is implemented through our regulations governing provider agreements (42 CFR Part 489). Essentially, a hospital qualifies for a waiver if it—

• Had traditionally followed the practice of allowing suppliers of items and services furnished to its inpatients to bill directly under Medicare Part B for those items and services; and

• This practice was so extensive that the hospital's immediate compliance with the new requirement would threaten the stability of patient care.

These provisions are set forth at §489.23.

Section 602(k) of Pub. L. 98–21 requires that we reduce the Medicare Part A payment to a hospital that has a waiver for the amount of Part B billings for nonphysician services furnished to the hospital's inpatients. Therefore, our regulations (§412.120(c)) state that payments for inpatient services are reduced to take into account 100 percent of the reasonable charges (before application of the Medicare Part B deductible and coinsurance amounts) for nonphysician services furnished by an outside supplier.

As mentioned earlier in section III.D.1. of this preamble, §412.118 provides that a hospital's indirect medical education payment is determined on the basis of the total DRG revenue based on the Federal rates received by the hospital. The DRG revenue received by hospitals that qualify for a waiver under §489.23 does not include the Part B reasonable charges for nonphysician services furnished by an outside supplier. Therefore, our policy for determining the amount of the indirect medical education payment for a hospital that has a waiver has been to base the payment on the DRG revenue based on Federal rates after it has been reduced for Part B billings.

Section 9112(a) of Pub. L. 99–272 amends section 602(k) of Pub. L. 98–21 by adding a provision that specifies that the indirect medical education payment for hospitals that have a waiver is to be computed as if the hospital were receiving under Part A all the payments that were made under Part B because of the waiver. That is, a hospital with a waiver under section 602(k) of Pub. L. 98–21 is treated as if the waiver is not in effect for purposes of computing the additional payment for the indirect costs of medical education. Section 9112(b) of Pub. L. 99–272 specifies that this amendment is effective for cost reporting periods beginning on or after January 1, 1986. Therefore, we are revising § 412.118(a)(2) to include in the computation of the additional payment for the costs of indirect medical education the payments made under Part B to hospitals that have a waiver.

In addition, section 9112(a) of Pub. L. 99–272 amended section 602(k) of Pub. L. 98–21 to specify that Part A services billed under Part B under a waiver will be paid at 100 percent of the reasonable charge (or other applicable basis of payment) and that in order to retain its waiver, the hospital must ensure that the supplier that bills for the services accepts this payment as payment in full (that is, the beneficiary is not responsible for payment of the coinsurance). In section 9112 of Pub. L. 99–272, Congress specifically stated that payment for Part A services billed under Part B is equal to 100 percent of the reasonable charge and that the entity furnishing the services must accept *this amount* as the full charge. Because there is no mention of a reduction of this amount by the Part B deductible, for administrative simplicity, we will not apply the deductible to these payments. We are revising § 489.23 to include this requirement, which is effective 10 days after the day of enactment of Pub. L. 99–272, that is, April 17, 1986.

V. Tables

This section contains the tables referred to in this preamble. For tables 2, 3a, and 3b, refer to the September 1, 1983 interim final rule (48 FR 39845). For Table 5, refer to the September 3, 1985 final rule (50 FR 35646).

TABLE 1.—ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

Region	Urban		Rural	
	Labor related	Nonlabor related	Labor related	Nonlabor related
1. New England (CT, ME, MA, NH, RI, VT)	2373.04	671.90	2143.01	509.76
2. Middle Atlantic (PA, NJ, NY)	2228.39	664.01	2177.08	516.97
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2366.53	615.20	1997.46	429.17
4. East North Central (IL, IN, MI, OH, WI)	2447.91	716.24	1981.59	481.18
5. East South Central (AL, KY, MS, TN)	2246.22	546.88	1987.01	401.85
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2271.87	636.26	1845.52	412.88
7. West South Central (AR, LA, OK, TX)	2319.16	602.67	1862.71	400.46
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2214.72	637.66	1828.56	447.96
9. Pacific (AK, CA, HI, OR, WA)	2219.61	749.07	1837.88	524.10
10. National	2319.83	667.48	1930.06	440.16

TABLE 4A.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX Taylor, TX	.8936

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Akron, OH Portage, OH	1.0998

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Summit, OH	
Albany, GA	.8122
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.9180
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0997
Bernalillo, NM	
Alexandria, LA	.9101
Rapides, LA	
Allentown-Bethlehem, PA-NJ	1.0377
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	.9948
Blair, PA	
Amarillo, TX	.9524
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2523
Orange, CA	
Anchorage, AK	1.5732
Anchorage, AK	
Anderson, IN	.9701
Madison, IN	
Anderson, SC	.8307
Anderson, SC	
Ann Arbor, MI	1.2513
Washtenaw, MI	
Anniston, AL	.8456
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	1.0587
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Asheville, NC	.8779
Buncombe, NC	
Athens, GA	.8119
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	.9592
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0488

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	.9531
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1.0934
Kane, IL	
Kendall, IL	
Austin, TX	1.1094
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.1970
Kern, CA	
Baltimore, MD	1.1068
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.9216
Penobscot, ME	
Baton Rouge, LA	.9753
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	1.0226
Calhoun, MI	
Beaumont-Port Arthur, TX	1.0008
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0838
Beaver, PA	
Bellingham, WA	1.1387
Whatcom, WA	
Benton Harbor, MI	.8845
Berrien, MI	
Bergen-Passaic, NJ	1.0668
Bergen, NJ	
Passaic, NJ	
Billings, MT	1.0151
Yellowstone, MT	
Biloxi-Gulfport, MS	.8426
Hancock, MS	
Harrison, MS	
Binghamton, NY	.9488
Broome, NY	
Tioga, NY	
Birmingham, AL	.9592
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9870
Burleigh, ND	
Morton, ND	
Bloomington, IN	.9826
Monroe, IN	
Bloomington-Normal, IL	.9772
McLean, IL	
Boise City, ID	1.0506

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1474
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.1242
Boulder, CO	
Bradenton, FL	.9128
Manatee, FL	
Brazoria, TX	.8678
Brazoria, TX	
Bremerton, WA	.9740
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1759
Fairfield, CT	
Brownsville-Harlingen, TX	.8911
Cameron, TX	
Bryan-College Station, TX	.9498
Brazos, TX	
Buffalo, NY	1.0608
Erie, NY	
Burlington, NC	.7867
Alamance, NC	
Burlington, VT	1.0056
Chittenden, VT	
Grand Isle, VT	
Canton, OH	1.0006
Carroll, OH	
Stark, OH	
Casper, WY	1.0982
Natrona, WY	
Cedar Rapids, IA	1.0099
Linn, IA	
Champaign-Urbana-Rantoul, IL	.9892
Champaign, IL	
Charleston, SC	.8846
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	1.0405
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	.8925
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	.9276
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	.9967
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	.9630

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Laramie, WY	
Chicago, IL	1.2260
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.2371
Butte, CA	
Cincinnati, OH-KY-IN	1.0969
Deaborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.8123
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.1479
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0362
El Paso, CO	
Columbus, MO	1.0940
Boone, MO	
Columbia, SC	.9100
Lexington, SC	
Richland, SC	
Columbia, GA-AL	.7871
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	.9613
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.9826
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	.8930
Allegeny, MD	
Mineral, WV	
Dallas,TX	1.0654
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	.8027
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	1.0582
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0859
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	.9071
Volusia, FL	
Decatur, IL	.9521
Macon, IL	
Denver, CO	1.2770
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Monies, IA	1.0478
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.1639
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, Mi	
Wayne, Mi	
Dothan, AL	.8395
Dale, AL	
Houston, AL	
Dubuque, IA	1.0512
Dubuque, IA	
Duluth, MN-WI	.9857
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.9427
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	.9367
El Paso, TX	
Elkhart-Goshen, IN	.9579
Elkhart, IN	
Elmira, NY	.9669
Chemung, NY	
Enid, OK	.9555
Garfield, OK	
Erie, PA	.9917
Erie, PA	
Eugene-Springfield, OR	1.1080
Lane, OR	
Evansville, IN-KY	1.0142
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0565
Clay, MN	
Cass, ND	
Fayetteville, NC	.8268
Cumberland, NC	
Fayetteville-Springdale, AR	.8018
Washington, AR	
Flint, MI	1.2014
Genesee, MI	
Florence, AL	.7831
Colbert, AL	
Lauderdale, AL	
Florence, SC	.7629
Florence, SC	
Fort Collins-Loveland, CO	1.0766
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.1166
Broward, FL	
Fort Myers-Cape Coral, FL	.9463
Lee, FL	
Fort Pierce, FL	1.0140
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.9175
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	.8686
Okaloosa, FL	
Fort Wayne, IN	.9497
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	.9925
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1405
Fresno, CA	
Gadsden, AL	.8712
Etowah, AL	
Gainesville, FL	.9571
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.1327
Galveston, TX	
Gary-Hammond, IN	1.0897
Lake, IN	
Porter, IN	
Glens Falls, NY	.9536
Warren, NY	
Washington, NY	
Grand Forks, ND	.9798
Grand Forks, ND	
Grand Rapids, MI	1.0585
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.0642
Cascade, MT	
Greeley, CO	1.0683
Weld, CO	
Green Bay, WI	1.0250
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.9319
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.9062
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.9515
Washington, MD	
Hamilton-Middletown, OH	1.0138
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	.9795
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Hartford-New Middletown-Britian-Bristol, CT	1.1377
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.8915
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1933
Honolulu, HI	
Houma-Thibodaux, LA	.9161
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.0589
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	.9439
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.8597
Madison, Al	
Indianapolis, IN	1.0516
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.2988
Johnson, IA	
Jackson, MI	1.0130
Jackson, MI	
Jackson, MS	.9285
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.7857
Madison, TN	
Jacksonville, FL	.9410
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	.7907
Onslow, NC	
Janesville-Beloit, WI	.9352
Rock, WI	
Jersey City, NJ	1.1026
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.8553
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	.9456
Cambria, PA	
Somerset, PA	
Joliet, IL	1.1170
Grundy, IL	
Will, IL	
Joplin, MO	.9135
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.2250
Kalamazoo, MI	
Kankakee, IL	.9439
Kankakee, IL	
Kansas City, KS-MO	1.0581
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0795
Kenosha, WI	
Killeen-Temple, TX	.8784
Bell, TX	
Coryell, TX	
Knoxville, TN	.8930
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9797
Howard, IN	
Tipton, IN	
LaCrosse, WI	1.0092
LaCrosse, WI	
Lafayette, LA	1.0040
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.9096
Tippecanoe, IN	
Lake Charles, LA	.9962
Calcasieu, LA	
Lake County, IL	1.1551
Lake IL	
Lakeland-Winter Haven, FL	.8785
Polk, FL	
Lancaster, PA	1.0319
Lancaster, PA	
Lansing-East Lansing, MI	1.0690
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.8103
Webb, TX	
Las Cruces, NM	.8702
Dona Ana, NM	
Las Vegas, NV	1.1171
Clark, NV	
Lawrence, KS	1.0105
Douglas, KS	
Lawton, OK	.9399
Comanche, OK	
Lewiston-Auburn, ME	.9356
Androscoggin, ME	
Lexington-Fayette, KY	.9800
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.9793
Allen, OH	
Auglaize, OH	
Lincoln, NE	.9639
Lancaster, NE	
Little Rock-North Little Rock, AR	1.1053
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8348
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	1.0204
Lorain, OH	
Los Angeles-Long Beach, CA	1.3192
Los Angeles, CA	
Louisville, KY-IN	1.0007
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	1.0053
Lubbock, TX	
Lynchburg, VA	.9147
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.9256
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0821
Dane, WI	
Manchester-Nashua, NH	.9506
Hillsboro, NH	
Merrimack, NH	
Mansfield, OH	.9846
Richland, OH	
McAllen-Edinburg-Mission, TX	.8045
Hidalgo, TX	
Medford, OR	1.0279
Jackson, OR	
Melbourne-Titusville, FL	.9309
Brevard, FL	
Memphis, TN-AR-MS	1.0416
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Miami-Hialeah, FL	1.0624
Dade, FL	

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Middlesex-Somerset-Hunterdon NJ	1.0273
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.1221
Midland, TX	
Milwaukee, WI	1.1327
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.1685
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.8862
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.2013
Stanislaus, CA	
Monmouth-Ocean, NJ	.9851
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.9274
Ouachita, LA	
Montgomery, AL	.8810
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	.9991
Delaware, IN	
Muskegon, MI	.9838
Muskegon, MI	
Naples, FL	1.0371
Collier, FL	
Nashville, TN	.9345
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.3300
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9723
Bristol, MA	
New Haven-West Haven-Waterbury-Meriden, CT	1.1193
New Haven, CT	
New London-Norwich, CT	1.1021
New London, CT	
New Orleans, LA	.9275
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3707
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1319
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8896
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9620
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4783
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.8670
Marion, FL	
Odessa, TX	.9548
Ector, TX	
Oklahoma City, OK	1.0849
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0707
Thurston, WA	
Omaha, NE-IA	1.0432
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	.9230
Orange, NY	
Orlando, FL	1.0113
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.8183
Daviess, KY	
Oxnard-Ventura, CA	1.2756
Ventura, CA	
Panama City, FL	.8292
Bay, FL	
Parkersburg-Marietta, WV-OH	.9053
Washington, OH	
Wood, WV	

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Pascagoula, MS	.9606
Jackson, MS	
Pensacola, FL	.8677
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	1.0506
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.1696
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0721
Maricopa, AZ	
Pine Bluff, AR	.7950
Jefferson, AR	
Pittsburgh, PA	1.0930
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0170
Berkshire, MA	
Portland, ME	.9807
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1985
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	.9304
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	.9978
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0424
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Statewide, RI	
Washington, RI	
Provo-Orem, UT	.9785
Utah, UT	
Pueblo, CO	1.1127
Pueblo, CO	
Racine, WI	.9928
Racine, WI	
Raleigh-Durham, NC	.9648
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	.9552
Pennington, SD	
Reading, PA	1.0172
Berks, PA	
Redding, CA	1.2304
Shasta, CA	

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Reno, NV	1.1751
Washoe, NV	
Richland-Kennewick, WA	1.0180
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.9494
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.2424
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.8930
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0208
Olmsted, MN	
Rochester, NY	1.0151
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.1270
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2873
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0989
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.9944
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	.9417
Buchanan, MO	
St. Louis, MO–IL	1.0747
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0890
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2478
Monterey, CA	
Salt Lake City-Ogden, UT	1.0277
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.8654
Tom Green, TX	
San Antonio, TX	.8877
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.3007
San Diego, CA	
San Francisco, CA	1.6395
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4696
Santa Clara, CA	
Santa Barbara-Santa Maria-Lompoc, CA	1.1734
Santa Barbara, CA	
Santa Cruz, CA	1.2341
Santa Cruz, CA	
Santa Fe, NM	.9737
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.3015
Sonoma, CA	
Sarasota, FL	.9568
Sarasota, FL	
Savannah, GA	.8851
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	.9908
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.1493
King, WA	
Snohomish, WA	
Sharon, PA	.9685
Mercer, PA	
Sheboygan, WI	.9812
Sheboygan, WI	
Sherman-Denison, TX	.8556
Grayson, TX	
Shreveport, LA	.9542
Bossier, LA	
Caddo, LA	
Sioux City, IA–NE	.9988
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	1.0135
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0012
St. Joseph, IN	
Spokane, WA	1.1473
Spokane, WA	
Springfield, IL	1.0585
Menard, IL	
Sangamon, IL	
Springfield, MO	.9790
Christian, MO	
Greene, MO	
Springfield, MA	.9986
Hampden, MA	
Hampshire, MA	
State College, PA	1.0692
Centre, PA	
Steubenville-Weirton, OH–WV	.9584
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.2776
San Joaquin, CA	
Syracuse, NY	1.0225
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0971
Pierce, WA	
Tallahassee, FL	.9439
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	.9758
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.8393
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	.8586
Miller, AR	
Bowie, TX	
Toledo, OH	1.2176
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	1.0554
Shawnee, KS	
Trenton, NJ	1.0241
Mercer, NJ	
Tucson, AZ	1.0015
Pima, AZ	
Tulsa, OK	1.0056
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1.0097
Tuscaloosa, AL	
Tyler, TX	.9961
Smith, TX	
Utica-Rome, NY	.8775
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3298
Napa, CA	
Solano, CA	
Vancouver, WA	1.1573
Clark, WA	
Victoria, TX	.8144
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9856
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0564
Tulare, CA	
Waco, TX	.9049
McLennan, TX	
Washington, D.C.-MD-VA	1.1876

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax, City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9919
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.9798
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	9899
Palm Beach, FL	
Wheeling, WV-OH	.9699
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.1504
Butler, KS	
Sedgwick, KS	
Wichita Falls, TX	.8711
Wichita, TX	
Williamsport, PA	.8981
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0509
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.9520
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.0020
Worcester, MA	
Yakima, WA	1.0312
Yakima, WA	
York, PA	.9780
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.0403
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0383
Sutter, CA	
Yuba, CA	

TABLE 4b.—WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage index
Alabama	.7411
Alaska	1.4878
Arizona	.9254
Arkansas	.7646
California	1.1372
Colorado	.9257

TABLE 4b.—WAGE INDEX FOR RURAL AREAS—Continued

Non-urban area	Wage index
Connecticut	1.0382
Delaware	.8581
Florida	.8750
Georgia	.7721
Hawaii	1.0082
Idaho	.9062
Illinois	.8851
Indiana	.8621
Iowa	.8654
Kansas	.8418
Kentucky	.7977
Louisiana	.8542
Maine	.8591
Maryland	.8709
Massachusetts	1.0470
Michigan	.9518
Minnesota	.8723
Mississippi	.7648
Missouri	.8264
Montana	.9086
Nebraska	.8249
Nevada	1.0719
New Hampshire	.9183
New Jersey*	
New Mexico	.9145
New York	.8666
North Carolina	.8070
North Dakota	.8994
Ohio	.9033
Oklahoma	.8399
Oregon	1.0702
Pennsylvania	.9357
Rhode Island*	
South Carolina	.7769
South Dakota	.8202
Tennessee	.7675
Texas	.8120
Utah	.9435
Vermont	.8823
Virginia	.8133
Washington	1.0197
West Virginia	.8751
Wisconsin	.8928
Wyoming	.9673

*All counties within the State are classified urban.

VI. Regulatory Impact Statement

A. Executive Order 12291

Section 3(a) of Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for regulations that meet the criteria of a "major rule". Under section 1(b) of E.O. 12291, a major rule is a regulation that would be likely to result in—

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Generally, the consequences of the provisions contained in this interim final rule flow from the statute, not the regulation itself. Nonetheless, their magnitude is substantial, and, in such cases, we voluntarily prepare a regulatory impact analysis, even if the rule, in itself, may not meet the definition of a major rule. It is unpractical for us either to determine whether or not this rule is a major rule or to prepare and consider a regulatory impact analysis within the time allowed by Pub. L. 99-272 for implementation of its provisions. Section 8 of E.O. 12291 provides for exemption from the requirements for impact analysis in cases in which compliance with the terms of E.O. 12291 would conflict with deadlines imposed by statute. Therefore, we have sought and received an exemption from the Director of the Executive Office of Management and Budget (EOMB).

We are in the process of preparing a proposed rule setting forth the FY 1987 prospective payment rates, which will include a regulatory impact analysis in accordance with the E.O. 12291. We plan to include in that impact analysis an analysis of the provisions of this interim final rule. By so doing, we will adhere to the requirements of E.O. 12291 as closely as is feasible in view of the statutory deadline.

B. Regulatory Flexibility Act

We prepare and publish a regulatory flexibility analysis, consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 through 612), for regulations unless the Secretary certifies that implementation of the regulations would not have a significant economic impact on a substantial number of small entities. We treat all hospitals under the prospective payment system as small entities for purposes of the RFA. Therefore, this rule clearly affects a substantial number of small entities.

Preparation of a regulatory flexibility analysis is not feasible for this rule in view of the time allowed under Pub. L. 99-272. Moreover, section 608 of the RFA authorizes the Secretary to delay completion of a regulatory flexibility analysis under certain conditions. However, a final regulatory flexibility analysis must be prepared no later than 180 days after the date of publication in the **Federal Register** of a final rule.

The Secretary finds that, due to the necessity for the timely implementation of sections 9101 through 9105 and 9112 of Pub. L. 99-272, an emergency exists

that makes timely preparation of a regulatory flexibility analysis impracticable. However, we propose to prepare and publish a regulatory flexibility analysis, including an analysis of the provisions of this interim final, in the forthcoming proposed rule setting forth the proposed FY 1987 prospective payment rates.

VII. Other Required Information

A. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** for substantive rules to afford a period for public comment. However, we may waive that procedure if we find good cause that notice and comment are impractical, unnecessary, or contrary to the public interest. When we do so, we incorporate an explanation of our findings in the rule to be issued.

Section 9115(b) of Pub. L. 99–272 provides that we may issue the regulations that implement sections 9101 through 9105 and 9112 of Pub. L. 99–272 on an interim of other basis as may be necessary. The statute, which was enacted on April 7, 1986, provided that these provisions are generally effective on May 1, 1986. It is clear, therefore, that undergoing a proposed rulemaking process for this rule, which is effective May 1, 1986, would be impactical and, in terms of notifying affected parties of final implementing regulations as soon as possible, would not be in the public interest. Therefore, we find good cause to waive proposed rulemaking and to issue these regulations as final. Nonetheless, we are providing a 30-day comment period as indicated at the beginning of this preamble.

Because of the large number of items of correspondence we normally receive on regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the date and time specified in the "Dates" section of this preamble and we will respond to those comments in the preamble to the final rule that announces the FY 1987 prospective payment rates

B. Effective Dates

Based on the provisions of Pub. L. 99–272, the effective date of this interim final rule is May 1, 1986. Changes to the regulation are effective as follows:

- May 1, 1986:

§ 400.310 Display of currently valid OMB control numbers.
§ 405.463 Rate of increase limits.
§ 412.1 Scope of part.
§ 412.63 Federal rates for fiscal years after Federal fiscal year 1984.
§ 412.70 General description.
§ 412.73 Determination of the hospital-specific rate.
§ 412.80 General provisions.
§ 412.82 Payment for extended length-of-stay cases (day outliers).
§ 412.90 General rules.
§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.
§ 412.113 Payments determined on a reasonable cost basis.
§ 412.118 Determination of indirect medical education costs.

The changes affecting the determination of indirect medical education costs are all effective on May 1, 1986 except that the provision under which HCFA will no longer offset the total DRG revenue used to compute the payment for indirect medical education costs for payments made to outside suppliers under a section 602(k) waiver (§ 412.118(a)(2)) is effective for cost reporting periods beginning on or after January 1, 1986.

- April 17, 1986:

§ 489.23 Special provisions for waiver of certain inpatient hospital services requirements.

- Cost reporting periods beginning on or after January 1, 1986:

§ 412.118(a)(2)—Calculation of a hospital's total DRG revenue for purposes of determining the payment for the indirect medical education costs.

C. Waiver of 30-Day Delay in Effective Dates

We normally provide a delay of 30 days in the effective date of all final rules. However, the effective dates of the provisions of sections 9101, 9102, 9103, 9104, 9105, and 9112 of Pub. L. 99–272 that are being implemented by these regulations are specified in those sections of the law. The provisions of these interim final regulations conform to the clear direction provided in the law. For this reason, and also for purposes of placing the regulations into operation as soon as possible, a delayed effective date is both impractical and unnecessary. Therefore, we find good cause to waive the usual 30-day delay.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511) requires that any information collection requirements included in a regulatory document must be submitted to and approved by the EOMB before the public is required to comply with those requirements. However, section 9115(a) of Pub. L. 99–272 specifies that the Paperwork Reduction Act of 1980 does not apply to information required for purposes of carrying out Subpart A, Part 1, Subtitle A, Title IX of Pub. L. 99–272 (that is, sections 9101 through 9115). Therefore, any information collection requirements that stem from the changes made by this interim final rule, which implements sections 9101, 9102, 9103, 9104, 9105, and 9112 of Pub. L. 99–272, are not subject to EOMB approval.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Health facilities. Medicare.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Chapter IV is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

I. Part 400, Subpart C is amended as follows:

PART 400—INTRODUCTION; DEFINITIONS

Subpart C—OMB Control Numbers for Approved Collections of Information

A. The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

§ 400.310 [Amended]

B. In § 400.310, the line that reads "412.118(d)(2) . . . 0938–0337" is revised to read "412.118(f)(2) . . . 0938–0337".

B. II. Part 405, Subpart D is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians

A. The authority citation for Subpart D continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

B. In § 405.463, paragraph (c)(3)(i) is revised to read as follows:

§ 405.463 Ceiling on rate of hospital cost increases.

* * * * *

(c) *Procedure for establishing the ceiling (target amount).* * * *

(3) *Target rate percentage.* (i) The applicable target rate percentage is determined as follows:

(A) *Federal fiscal year 1986.* The applicable target rate percentage for cost reporting periods beginning on or after October 1, 1985 and before September 30, 1986 is five-twenty-fourths of one percent. For purposes of determining the target amount for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase with respect to cost reporting periods beginning during Federal fiscal year 1986 is deemed to have been one-half percent.

(B) *Federal fiscal years 1987 and following.* Subject to the limitation set forth in paragraph (c)(3)(i)(C) of this section, the applicable target rate percentage for cost reporting periods beginning during fiscal year 1987 and in all fiscal years thereafter is determined using the methodology set forth in §412.63 (e)(1) through (e)(3).

(C) *Limitation for Federal fiscal years 1987 and 1988.* For cost reporting periods beginning in fiscal years 1987 and 1988, the applicable percentage determined under paragraph (c)(3)(i)(B) of this section is not to exceed the prospectively estimated increase in the market basket index for the cost reporting period.

* * * * *

III. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ww).

B. The table of contents of Part 412 is amended by adding the title of a new § 412.106 to Subpart G to read as follows:

Subpart G—Special Treatment of Certain Facilities

Sec.

* * * * *

412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

* * * * *

§ 421.1 [Amended]

C. In Subpart A, § 412.1, in the fifth sentence of paragraph (b), "Three years" is changed to read "four years".

D. In Subpart D, § 412.63, the introductory language of paragraphs (c)(2) and (c)(3) is reprinted without change for the convenience of the reader; paragraphs (c)(2)(iv) and (c)(3)(i) are revised; current paragraphs (d), (e), (f), and (g) are redesignated as paragraphs (e), (f), (g), and (h), respectively; a new paragraph (d) is added; and newly redesignated paragraphs (e) and (h) are revised to read as follows:

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

§ 412.63 Federal rates for fiscal years after Federal fiscal year 1984.

* * * * *

(c) *Updating previous standardized amounts.* * * *

(2) Each of those amounts is equal to the respective adjusted average standardized amount computed for fiscal year 1984 under § 412.62(g)—

* * * * *

(iv) Adjusted for budget neutrality under paragraph (f) of this section.

(3) For fiscal year 1986 and thereafter, HCFA computes, for urban and rural hospitals in the United States and for urban and rural hospitals in each region, average standardized amounts equal to the respective adjusted average standardized amounts computed for the previous fiscal year—

(i) Increased by the applicable percentage increase determined under paragraph (e) of this section;

* * * * *

(d) *Applicable percentage change for fiscal year 1986.*

(1) The applicable percentage change for fiscal year 1986 is—

(i) For discharges occurring on or after October 1, 1985 and before May 1, 1986, zero percent; and

(ii) For discharges occurring on or after May 1, 1986, one-half of one percent.

(2) For purposes of determining the standardized amounts for discharges occurring on or after October 1, 1986, the applicable percentage increase for fiscal year 1986 is deemed to have been one-half of one percent.

(e) *Determining applicable percentage changes for fiscal years 1987 and following.*

(1) Subject to the limitations described in paragraph (e)(4) of this section, beginning with fiscal year 1987, the Secretary determines for each fiscal year the applicable percentage change that applies for purposes of paragraph (c)(3) of this section as the applicable percentage increase for discharges in that fiscal year.

(2) The percentage change takes into account amounts the Secretary believes necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

(3) In making this determination, the Secretary considers the recommendations of the Prospective Payment Assessment Commission.

(4) For fiscal years 1987 and 1988, the applicable percentage change is not to exceed the prospectively estimated increase in the market basket index (as described in § 405.463 of this chapter) for the fiscal year.

* * * * *

(h) *Adjusting for different area wage levels.* HCFA adjusts the proportion (as estimated by HCFA from time to time) of Federal rates computed under paragraph (g) of this section that are attributable to wages and labor-related costs for area differences in hospital wage levels by a factor (established by HCFA) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

E. Subpart E is amended as follows:

Subpart E—Determination of Transition Period Payment Rates

1. Section 412.70 is revised to read as follows:

§ 412.70 General description.

(a) *Basic rules.* (1) During the initial four-year transition period, payments to all hospitals paid under the prospective payment system are based on a combination of the Federal prospective payment rates, as determined under Subpart D of this part, and hospital-specific rates determined under this subpart.

(2) For the first two years of the transition period, both portions of the payment rates are also adjusted to ensure budget neutrality.

(3) At the end of the transition period (that is, for cost reporting periods beginning on or after October 1, 1987, payments are based on the national prospective payment rates determined under Subpart D of this part, except for payments that may be made under the special treatment provisions of Subpart G of this part.

(b) *Payment amounts based on the hospital-specific portion and the Federal portion.* For discharges occurring in cost reporting periods beginning on or after October 1, 1983

and before October 1, 1987, the Medicare transition payment rate for a particular covered discharge equals a blend of the applicable portion of the hospital-specific rate, as determined under § 412.73, plus the applicable portions of the Federal national and regional prospective payment rates, as described in paragraph (c) of this section, and summarized in the Table. Payments to new hospitals are based on the Federal national and regional prospective payment rates, as described in paragraph (d) of this section.

(c) *Amount of blended portions.*[1] The blends of hospital-specific and Federal portions are as follows:

(1) For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984, the blend is—

(i) 75 percent of the hospital-specific rate; and

(ii) 25 percent of the appropriate Federal prospective payment rate.

(2) For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985, the blend is—

(i) 50 percent of the hospital-specific rate; and

(ii) 50 percent of the appropriate Federal prospective payment rate.

(3) For cost reporting periods beginning on or after October 1, 1985 and before October 1, 1986, the blend is as follows:

(i) For the first seven months of the cost reporting period, the blend is—

(A) 50 percent of the hospital-specific rate; and

(B) 50 percent of the appropriate Federal prospective payment rate.

(ii) For the remaining five months of the cost reporting period, the blend is—

(A) 45 percent of the hospital-specific rate; and

(B) 55 percent of the appropriate Federal prospective payment rate.

(4) For cost reporting periods beginning on or after October 1, 1986 and before October 1, 1987, the blend is—

(i) 25 percent of the hospital-specific rate; and

(ii) 75 percent of the appropriate Federal prospective payment rate.

(5) The appropriate Federal prospective payment rate is a combined regional and national rate and changes with the Federal fiscal year. For Federal fiscal year 1984, which begins October 1, 1983, the Federal prospective payment rate is 100 percent regional. For Federal fiscal years 1985 and 1986, which begin October 1, 1984 and October 1, 1985, respectively, the combined rate is 75 percent regional and 25 percent national. For Federal fiscal year 1987, which begins October 1, 1986, the combined rate is 50 percent regional and 50 percent national. Effective with Federal fiscal year 1988, which begins October 1, 1987, the Federal prospective payment rate is 100 percent national.

TABLE—SUMMARY OF HOSPITAL-SPECIFIC AND FEDERAL PORTION PERCENTAGES FOR DETERMINING TRANSITION PAYMENT RATES

Cost reporting period beginnng on or after	Hospital-specific portion percentage	Federal portion percentage*
October 1, 1983	75	25
October 1, 1984	50	50
October 1, 1985—		
The first seven months of the cost reporting period	50	50
The remaining five months of the cost reporting period	45	55
October 1, 1986	25	75
October 1, 1987	0	100

* NOTE: The Federal portion percentages are applied to the combined national or regional prospective payment rates, as appropriate, as determined under Subpart D of this part for the Federal fiscal year in which the discharge occurs.

(d) *Blended portions for new hospitals.* The prospective payment rates for new hospitals are a blend of the Federal regional and national rates as follows:

(1) For discharges occurring on or after October 1, 1983, and before October 1, 1984, the prospective payment rate equals the appropriate Federal regional rate.

(2) For discharges occurring on or after October 1, 1984 and before October 1, 1986, the prospective payment rate is a blend of—

(i) 75 percent of the appropriate Federal regional prospective payment rate; and

(ii) 25 percent of the appropriate Federal national rate.

(3) For discharges occurring on or after October 1, 1986 and before October 1, 1987, the prospective payment rate is a blend of—

(i) 50 percent of the appropriate Federal regional prospective payment rate; and

(ii) 50 percent of the appropriate Federal national prospective payment rate.

(4) For discharges occurring on or after October 1, 1987, the prospective payment rate equals the appropriate Federal national rate.

2. In § 412.73, paragraph (c)(3) is revised and new paragraphs (c)(4) and (c)(5) are added to read as follows:

§ 412.73 Determination of the hospital-specific rate.

* * * * *

(c) *Updating base-year costs.* * * *

(3) *For Federal fiscal year 1986.* (i) The amount determined under paragraph (c)(2) of this section is updated by—

(A) Zero percent for the first seven months of the hospital's cost reporting period; and

(B) One-half of one percent for the remaining five months of the hospital's cost reporting period.

(ii) For purposes of determining the updated base-year costs for cost reporting periods beginning in Federal fiscal year 1987 (that is, on or after October 1, 1986 and before October 1, 1987), the update factor for the previous cost reporting period is deemed to have been one-half of one percent.

(4) *For Federal fiscal year 1987.* The amount determined under paragraph (c)(3)(ii) of this section is updated by the target rate percentage determined under § 405.463(c)(3) of this chapter.

(5) *For Federal fiscal years 1988 and following.* For purposes of determining the prospective payment rates for sole community hospitals under § 412.92(d), the base-year cost per discharge continues to be updated for each Federal fiscal year after Federal fiscal year 1987 by the target rate percentage determined under § 405.463(c)(3) of this chapter.

* * * * *

F. Subpart F is amended as follows:

Subpart F—Payment for Outlier Cases

§ 412.80 [Amended]

1. In § 412.80, the chart in paragraph (a)(1)(ii)(B) is revised to read as follows:

Federal fiscal year	Regional rate percentage	National rate percentage
October 1, 1983	100	0
October 1, 1984	75	25
October 1, 1985	75	25
October 1, 1986	50	50
October 1, 1987	0	100

§ 412.82 [Amended]

2. In § 412.82, the chart in paragraph (c) is revised to read as follows:

Cost reporting periods beginning on or after	Federal portion (percent)
October 1, 1983	25
October 1, 1984	50
October 1, 1985—	
The first seven months of the cost reporting period	50
The remaining five months of the cost reporting period	55
October 1, 1986	75
October 1, 1987	100

[1] For purposes of this paragraph and §§ 412.80(a)(1)(ii)(B) and 412.82(c), see section 9102(d)(4) of Pub. L. 99-272 for special provisions concerning the transition period applicable to hospitals in the State of Oregon.

G. Subpart G is amended as follows:

Subpart G—Special Treatment of Certain Facilities

1. In § 412.90, a new paragraph (h) is added to read as follows:

§ 412.90 General rules.

* * * * *

(h) *Hospitals that serve a disproportionate share of low-income patients.* For discharges occurring on or after May 1, 1986 and before October 1, 1988, HCFA makes an additional payment to hospitals that serve a disproportionate share of low-income patients. The criteria for this additional payment are set forth in § 412.106.

2. A new § 412.106 is added to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

(a) *Basic rule.* (1) Unless a hospital elects the option concerning the period of time used for counting the number of patient days (that is, the hospital's cost reporting period rather than the Federal fiscal year), as described in paragraph (a)(2) of this section, a hospital's disproportionate patient percentage is the sum of the following, expressed as a percentage:

(i) Number of covered patient days during each month of the Federal fiscal year in which the hospital's cost reporting period begins of those patients who are entitled during that month to both Medicare Part A and Supplemental Security Income benefits under title XVI of the Act (excluding those patients receiving State supplementation only), summed for the months of the Federal fiscal year, and divided by the number of patient days during that same Federal fiscal year of those patients entitled to Medicare Part A.

(ii) Number of patient days during the hospital's cost reporting period of those patients who are entitled to Medicaid but not to Medicare Part A divided by the total number of patient days in that same period.

(2) For purposes of making the calculation in paragraph (a)(1)(i) of this section, a hospital may elect to have the count of the number of patient days made on the basis of its cost reporting period, rather than by Federal fiscal year, if the following conditions are met:

(i) The hospital furnishes to its intermediary, in a manner and format prescribed by HCFA, data on its Medicare Part A patients for its cost reporting period.

(ii) The hospital bears the full cost of preparing its submittal as described in paragraph (a)(2)(i) of this paragraph and the cost incurred by SSA in determining the number of beneficiaries entitled to both Medicare Part A and Supplemental Security Income benefits for each month of the cost reporting period.

(3) The number of beds in a hospital is determined as specified in § 412.118(b).

(4) The definitions for urban and rural areas are the same as those set forth in § 412.62(f).

(6) *Criteria for classification.* For discharges occurring on or after May 1, 1986 and before October 1, 1988, a payment adjustment (as described in paragraph (c) of this section) is made for each hospital that meets one of the following criteria:

(1) During the hospital's cost reporting period, the hospital has a disproportionate patient percentage that is at least equal to—

(i) 15 percent, if the hospital is located in an urban area and has 100 or more beds;

(ii) 40 percent, if the hospital is located in an urban area and has fewer than 100 beds; or

(iii) 45 percent, if the hospital is located in a rural area.

(2) The hospital is located in an urban area, has 100 or more beds, and can demonstrate that, during its cost reporting period, more than 30 percent of its total inpatient care revenues are derived from State and local government payments for indigent care furnished to patients who are not covered by Medicare or Medicaid.

(c) *Payment adjustment.* If a hospital meets one of the criteria in paragraph (b) of this section, the hospital's total DRG revenue based on DRG–adjusted prospective payment rates (for transition period payments, the Federal portion of the hospital's payment rates), including outlier payments determined under Subpart F of this part but excluding additional payments made under the provisions of this subpart or § 412.118, is increased by the disproportionate share payment adjustment factor, determined as follows:

(1) If the hospital meets the criteria of paragraph (b)(1) (i) of this section, the disproportionate share payment adjustment factor is the lesser of—

(i) 15 percent; or

(ii) 2.5 percent plus one-half the difference between the hospital's disproportionate patient percentage and 15 percent.

(2) If the hospital meets the criteria of paragraph (b)(1)(ii) of this section, the disproportionate share payment adjustment factor is five percent.

(3) If the hospital meets the criteria of paragraph (b)(1)(iii) of this section, the disproportionate share payment adjustment factor is four percent.

(4) If the hospital meets the criteria of paragraph (b)(2) of this section, the disproportionate share payment adjustment factor is 15 percent.

F. Subpart H is amended as follows:

Subpart H—Payments to Hospitals under the Prospective Payment System

§ 412.113 [Amended]

1. In § 412.113, paragraph (b) is amended by revising the date in the third sentence from "Ootober 1, 1986" to "October 1, 1987".

2. Section 412.118 is amended by revising the introductory language; revising paragraphs (a) and (c); redesignating current paragraphs (d), (e), (f), and (g) as paragraphs (e), (f), (g), and (h), respectively; adding a new paragraph (d); and revising newly redesignated paragraphs (e) and (g) to read as follows:

§ 412.118 Determination of indirect medical education costs.

To determine the indirect medical education costs, HCFA uses the following procedures:

(a) *Basic data.* HCFA determines the following for each hospital:

(1) The hospital's ratio of full-time equivalent interns and residents, except as limited under paragraph (g) of this section, to number of beds (as determined in paragraph (b) of this section).

(2) The hospital's total DRG revenue based on DRG-adjusted prospective payment rates (for transition period payments, the Federal portion of the hospital's payment rates), including outlier payments determined under Subpart F of this part but excluding additional payments made under the provisions of Subpart G of this Part. For cost reporting periods beginning on or after January 1, 1986, for purposes of this section, the total DRG revenue is not offset for payments made to outside suppliers under § 489.23 of this chapter for nonphysician services furnished to beneficiaries entitled to Medicare Part A.

* * * * *

(c) *Measurement for teaching activity.* The factor representing the effect of teaching activity on inpatient operating costs is equal to the following:

(1) For discharges occurring on or after May 1, 1986 and before October 1, 1988, the factor equals .405.

(2) For discharges occurring on or after October 1, 1988, the factor is equal to .5795.

(d) *Determination of education adjustment factor.* (1) For discharges occurring on or after May 1, 1986 and before October 1, 1988, each hospital's education adjustment factor is calculated as follows:

(i) *Step one*—A factor representing the sum of 1.00 plus the hospital's ratio of full-time equivalent interns and residents to beds, as determined under paragraph (a)(1) of this section, is raised to an exponential power equal to the factor set forth in paragraph (c)(1) of this section.

(ii) *Step two*—The factor derived from step one is reduced by 1.00.

(iii) *Step three*—The factor derived from completing steps one and two is multiplied by 2.00.

(2) For discharges occurring on or after October 1, 1988, each hospital's education adjustment factor is calculated as follows:

(i) *Step one*—A factor representing the sum of 1.00 plus the hospital's ratio of full-time equivalent interns and residents to beds, as determined under paragraph (a)(1) of this section, is raised to an exponential power equal to the factor set forth in paragraph (c)(2) of this section.

(ii) *Step two*—The factor derived from step one is reduced by 1.00.

(iii) *Step three*—The factor derived from completing steps one and two is multiplied by 1.50.

(e) *Determination of payment amount.* Each hospital's indirect medical education payment is determined by multiplying the total DRG revenue, as determined under paragraph (a)(2) of this section, by the applicable education adjustment factor derived in paragraph (d) of this section.

* * * * *

(g) *Limits on count of interns and residents.* (1) Interns and residents who are assigned to a freestanding family practice center or an excluded distinct part hospital unit on the day that the count of interns and residents (as described in paragraph (f)(2)(i) of this section) is made are not counted as full-time equivalents. Only the percentage of time that these interns and residents spend in the portion of the hospital subject to the prospective payment system on the day the count is made is used to determine the indirect medical education adjustment.

(2) Interns and residents in anesthesiology who are employed to replace anesthetists are not counted as full-time equivalents.

* * * * *

IV. Part 489, Subpart B is amended as follows:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

Subpart B—Essentials of Provider Agreements

1. The authority citation for Part 489 is revised to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act as amended (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh); section 602(k) of Pub. L. 98–21 (42 U.S.C. 1395ww note).

2. Section 489.23 is amended by adding a new paragraph (d) to read as follows:

§ 489.23 Special provisions for waiver of certain inpatient hospital services requirements.

* * * * *

(d) *Special waiver criteria effective April 17, 1986.* (1) For items and services furnished on or after April 17, 1986, a hospital that has received a waiver under this section must show that outside supplier's furnishing the items and services to the hospital's Medicare inpatients under the waiver have agreed to accept the amount paid under paragraph (d)(2) of this section as the full charge for the items and services.

(2) For items and services furnished on or after April 17, 1986, the Medicare Part B payment for items and services furnished by outside suppliers to beneficiaries who are inpatients of a hospital that has a waiver under this section is equal to 100 percent of the reasonable charge or other applicable Medicare Part B payment for the items and services and is not subject to the deductible amounts specified in § 405.245 of this chapter.

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

Dated: April 24, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: April 30, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86–10137 Filed 5–1–86; 5:04 pm]

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federal register

Tuesday
May 6, 1986

Part III

Department of Health and Human Services

Food and Drug Administration
Health Care Financing Administration

21 CFR Part 805
42 CFR Parts 400, 405, and 489
Cardiac Pacemaker Registry; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Health Care Financing Administration

21 CFR Part 805

42 CFR Parts 400, 405, and 489

[Docket Nos. 85N-0322 and BERC-324-P]

Cardiac Pacemaker Registry

AGENCIES: Food and Drug Administration and Health Care Financing Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule, prepared jointly by the Food and Drug Administration (FDA) and the Health Care Financing Administration (HCFA) is being issued to establish a national cardiac pacemaker registry, as mandated by the Deficit Reduction Act of 1984. The proposed rule would require that certain information be submitted to FDA for inclusion in the registry from providers and physicians requesting Medicare payment for an implantation, removal, or replacement of cardiac pacemaker devices and pacemaker leads. The proposed rule would permit HCFA to deny Medicare payment to physicians and providers of services who fail to submit the required information to the registry. The proposed rule would also permit HCFA to deny payment to providers who fail to return removed pacemaker devices or leads to the manufacturer if required by subsequent FDA regulations or fail to obtain a report of the manufacturer's test results on such returned pacemaker devices or leads.

DATES: Comments by July 7, 1986. We propose that any final rule based on this proposal become effective 60 days after the date of publication in the **Federal Register** of the final rule. The final rule would apply to cardiac pacemaker devices and leads implanted or removed on or after the effective date.

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

A copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Faye Iudicello, Rm. 3208, New Executive Office Bldg., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For FDA information: Les Weinstein, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

For Medicare information: Stan Katz, Bureau of Eligibility, Reimbursement and Coverage, Health Care Financing Administration, Rm. 489, East High Rise Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301-594-8561.

SUPPLEMENTARY INFORMATION:

Statutory Authority

The Deficit Reduction Act of 1984 (Pub. L. 98-369), which was enacted on July 18, 1984, amends title XVIII of the Social Security Act (the Act) and mandates the establishment of a national pacemaker registry.

An important purpose of section 2304, the pacemaker registry portion of the Deficit Reduction Act of 1984, is to reduce unnecessary Medicare expentitures for pacemakers and pacemaker lead implants and removals. Specifically, paragraph (A) and (C) of new section 1862(h)(1) of the Act require that, by regulations, the Secretary of Health and Human Services (the Secretary), through the Commissioner of Food and Drugs (the Commissioner), provide for a registry of all cardiac pacemaker devices and pacemaker leads implanted or removed, for which Medicare is requested to make, or has made, payment. Under section 1862(h)(1)(B) of the Act, the registry is to include, but is not limited to, data regarding the manufacturer, model number, and serial number of the device; the name of the recipient; the date and location of the implantation or removal of the device; the name of the physician implanting or removing the device; the name of the provider; and any express or implied warranties associated with the device.

The purposes of the registry are: to assist the Secretary in determining when Medicare payments for pacemaker devices may properly be made; to track the performance of the devices; to assist FDA in determining when testing or analyzing of any device by the manufacturer may be necessary; and to assist the Secretary in carrying out studies regarding the use of the devices.

Under section 1862(h)(1)(C) of the Act, each physician and each provider of services engaged in the implantation, removal, or replacement of cardiac pacemaker pulse generators and pacemaker leads for which payment is made or requested under Medicare is required, in accordance with the Secretary's regulations, to furnish information to FDA regarding such implantation, removal, or replacement for the pacemaker registry maintained by FDA.

Section 1862(h)(2) of the Act provides that the Secretary may by regulation require providers of services (1) to return to the manufacturer for testing any cardiac pacemaker or pacemaker lead which has been removed from a patient for whom Medicare payment is claimed, and (2) to forego charging any beneficiary for replacement of the pacemaker or pacemaker lead if the removed device has not been returned to the manufacturer for testing if required.

Section 1862(h)(3) of the Act provides that the Secretary may also require by regulation that the manufacturer of any cardiac pacemaker or pacemaker lead returned to the manufacturer under section 1862(h)(2) of the Act test or analyze the device and provide the results of the testing or analysis to the appropriate provider, together with information and documentation with respect to any warranties covering the pacemaker or the pacemaker lead. In any case in which the Secretary has reason to believe, based on information obtained from the registry or any other source, that removal of a cardiac pacemaker or pacemaker leads for which payment is or may be requested under Medicare is related to the malfunction of the pacemaker or lead, the Secretary may require that FDA personnel be present at the testing of the device by the manufacturer to determine whether the device was functioning properly.

Section 1862(h)(4) of the Act provides that the Secretary may deny payment under Medicare, in whole or in part, and for so long as the Secretary determines to be appropriate, for the implantation, removal, or replacement of a pacemaker or pacemaker lead by a physician or provider of services, if the Secretary determines in accordance with procedures established under section 1862(d) (2) and (3) of the Act that (1) the physician or provider failed to submit the required information to the registry, (2) the provider failed to return to the manfacturer any removed pacemaker or pacemaker lead as required by regulations issued under the Act, (3) the provider charged Medicare beneficiaries for replacement of a removed pacemaker or pacemaker lead that the provider failed to return to the manufacturer, or (4) the manufacturer of the pacemaker or pacemaker lead failed to test and report to the provider on the condition of, and any warranties applicable to, the returned device. (Paragraphs (2) and (3) of section 1862(d) of the Act require notice in accordance with regulations and allow

administrative and judicial appeals from determinations.)

The Proposed Regulations

The proposed regulations would (1) implement the mandatory provisions of section 1862(h)(1)(A) of the Act by providing for an FDA pacemaker registry of all cardiac pacemaker devices and leads for which Medicare payment is requested or made; (2) implement the mandatory provisions of section 1862(h)(1) (B), (C), and (D) of the Act by specifying the information that is to be required to be submitted to the registry, and when, how, and by whom it is to be submitted; and (3) implement the discretionary provisions of section 1862(h)(4) of the Act which authorize withholding of Medicare payments to physicians and providers who fail to submit the required information to the registry, or to providers when testing of pacemaker devices is not ordered or conducted if required by subsequent FDA regulations.

As proposed in 21 CFR 805.1(a) of FDA's regulations and 42 CFR 405.232(k) of HCFA's regulations, only those physicians and providers who engage in the implantation, removal, or replacement of cardiac pacemakers or leads paid for by Medicare would be required to submit data to the registry. It is estimated that approximately 85,000 to 100,000 pacemaker implants and replacements are performed annually on Medicare beneficiaries. Because these procedures involved the insertion of a pulse generator and pacemaker lead, however, the total number of devices on which information would be collected would equal approximately 170,000 to 200,000 per year.

Under proposed 21 CFR 805.10 of FDA's regulations and 42 CFR 405.232(k) of HCFA's regulations, physicians and providers of services who engage in the implantation, removal, or replacement of pacemakers and pacemaker leads, for which payment is made or requested under Medicare, would be required to supply information specified by FDA for the pacemaker registry for each procedure performed. Proposed 42 CFR 405.232(k) would require that the information by submitted in the form and manner provided under general instructions of the Medicare program.

Proposed 42 405.180 would authorize denial of Medicare payment to physicians or providers who the Secretary determines failed to submit required information for the registry. Under proposed 42 CFR 405.180(b), the affected physician or provider would be provided a 45-day notice and the physician or provider would be able to appeal the Secretary's determination under 42 CFR Part 405, Subpart O.

The proposed regulations would amend the existing regulations governing provider agreements (see proposed 42 CFR 489.21(g)) to ensure that patients are not charged (except for coinsurance and deductible amounts) by providers for covered services furnished in connection with the implantation, removal, or replacement of a pacemaker or pacemaker lead in any case in which HCFA denies payment for failure to submit the required information to the registry or failure to comply with any subsequent FDA regulations regarding return, testing, and reporting. If the provider later submits the appropriate information required by FDA, payment would be made if the provider resubmits the claim timely.

Under section 1866(a)(1)(A) of the Act, providers may not charge beneficiaries for items or services that are covered by the Medicare program except as provided under section 1866(a)(2)(A) of the Act. Under section 1866(a)(2)(A) of the Act and regulations at 42 CFR 489.30 providers may charge beneficiaries for deductible and coinsurance amounts for covered services. This provision applies regardless of whether HCFA denies payment to the provider for failure to comply with pacemaker registery requirements. Accordingly, the deductible and coinsurance amounts for implantation, removal, or replacement of a pacemaker or pacemaker lead would not be affected by a denial of payment to the provider under section 1862(h)(4) of the Act.

Denials of provider reimbursement claims because of failure to comply with the proposed regulations and any subsequent FDA pacemaker registry regulations are technical denials of otherwise covered services (that is, they do not relate to the medical need for, or appropriateness of, the services) and would, therefore, not be made by a Utilization Quality Control and Peer Review Organization (see 42 CFR 405.162).

FDA intends not to develop at this time regulations to implement other provisions of section 1862(h) of the Act that are discretionary. These provisions of the Act (1) provide for the return by providers of removed pacemakers and leads to manufacturers (section 1862(h)(2)(A) of the Act), and (2) provide for the testing of returned devices by manufacturers and the sharing of test results with providers and describe the circumstances under which FDA will participate in the testing (section 1862(h)(3) of the Act).

FDA believes that it should defer to subsequent regulations any implementation of section 1862(h) (2)(A) and (3) of the Act because the means to implement these provisions, and the degree of specificity that is needed, will depend to a large degree on the actual functioning of the pacemaker registry. The legislation itself recognizes this, in that it provides that once the registry is in operation, information derived from the registry will be used to identify pacemakers and pacemaker leads which are to be tested, and that information from the registry will be used to determine whether FDA personnel are to be present at the testing of specific pacemakers and leads. The agencies, however, invite comments on the deferral of regulations implementing these discretionary portions of the legislation. Any such comments should address (1) the need for implementing either or both of the discretionary provisions of the legislation and (2) the nature and extent of the regulations that should be established.

Although FDA has decided to defer to subsequent regulations any implementation of those portions of the Act pertaining to the return and testing of pacemakers and pacemaker leads and the sharing of test results, the HCFA portion of the proposed regulations (see 42 CFR 405.180 (a)(2) and (4)) would deny Medicare payment to providers of services if providers or manufacturers fail to comply with any return, testing, and reporting requirements that may be established by subsequent FDA regulations.

Submission of Data to the Registry

Under the proposed regulations, physicians and providers of services who engage in, and request or receive Medicare reimbursement for the implantation, removal, or replacement of pacemakers and pacemaker leads would be required to supply information specified by FDA to the pacemaker registry for initial implants, removals, and replacements in the form and manner required under general instructions of the Medicare program (see proposed 42 CFR 405.232(k)). Section 1862(h)(1)(B) of the Act requires that the registry include the following data elements: manufacturer name, model and serial numbers of the pacemaker or pacemaker lead; name of the recipient of the pacemaker or lead; date and location of implantation or removal of the pacemaker or lead; name of the physician implanting or removing the pacemaker or lead; name of the hospital or other provider billing for the procedure; any express or implied

warranties associated with the pacemaker or lead under contract or State law; and any other information that the Secretary deems appropriate.

FDA's regulations in proposed 21 CFR 805.10 would require the submission of each of these data elements when a pacemaker or pacemaker lead is implanted, removed, or replaced plus the following additional data elements deemed necessary for purposes of the registry: the patient's name and health insurance claim number (HICN), the provider number, the date of the procedure, the name and identification number of the physician who ordered the procedure, and the name and identification number of the operating physician. In addition, if the procedure about which the submission to the registry is being made was the removal or replacement of a pacemaker and/or lead, the following data elements would also have to be submitted: the date the device was initially implanted; whether a device that was replaced was left in the body; whether a device not left in the body was returned to the manufacturer; if the pulse generator was removed or replaced, whether a lead also was removed or replaced; and if the procedure involved a lead implant, whether a former lead was left in the body. Although the agencies believe we have identified the data elements essential to achievement of the statutory purpose, we will consider additional elements and may incorporate them in the final rule if such additional elements are identified and found to be necessary.

Section 1862(h)(1)(F) of the Act states that any person or organization other than those required by the Act to submit registry information respecting pacemakers or pacemaker leads may provide to the registry such information. The proposed rule would not require this information from anyone other than physicians and providers reimbursed by Medicare. We, however, encourage all persons who implant, remove, or replace cardiac pacemakers or pacemaker leads in non-Medicare patients to provide such information to the registry. We request that these reports include the data elements described in 21 CFR 805.10.

How Registry Data Would Be Used

FDA plans to use the data from the registry to monitor the performance of pacemakers and leads. The registry will provide FDA with a mechanism for monitoring and evaluating the long-term performance of pacemakers and leads in order to identify generic failures or defects. This information, along with notification of recalls resulting from product malfunctions identified by the registry, would be made available to HCFA and accessible to other Department of Health and Human Services components in connection with their statutory responsibilities.

FDA may notify HCFA of risks associated with a particular device and HCFA could make appropriate adjustments in Medicare coverage of the device. Also, the information generated by examination of pacemaker data may lead FDA to promulgate regulations that would set forth criteria for requesting that certain types of pacemakers and leads be returned to the manufacturers for testing. If in accordance with any such regulations, these devices are not tested and the results are not sent to the providers and FDA, FDA may notify HCFA that payment should be denied for the services provided in connection with the devices.

Public Availability of Registry Data

Public availability of information submitted to or stored in the registry or contained in agency studies regarding the use of pacemakers and pacemaker leads will be governed by section 1862(h)(D) of the Act which prohibits the Secretary from releasing any specific information that identifies by name a recipient of any pacemaker device or lead or that would otherwise identify a specific recipient. Moreover, information reported to the registry would be made available to the public on request in accordance with the Freedom of Information Act (the FOIA) (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), the Department's public information regulations (45 CFR Part 5), FDA's public information regulations (21 CFR Part 20), and HCFA's public information regulations (42 CFR Part 401).

Delegation of Authority

The Secretary plans to delegate to FDA the authority to establish and maintain the registry and to HCFA the authority to require Medicare physicians and providers to comply with the requirements of furnishing information for the registry.

Interagency Task Force/Interagency Agreement

FDA and HCFA each are mindful of the need to cooperate and coordinate their activities related to the registry. To accomplish this, they have formed an interagency task force consisting of representatives from FDA and HCFA. The task force is charged with developing the implementing regulations, developing policies on data collection and analysis, and working out the details necessary for the registry to become operational efficiently and successfully. Moreover, FDA and HCFA will sign an interagency agreement defining their respective responsibilities in accordance with the Secretary's delegation of authority.

Educational Initiatives

FDA and HCFA will undertake educational initiatives for informing physicians, providers of services, and pacemaker and pacemaker lead manufacturers of their responsibilities under the registry and the regulations.

Regulatory Impact Statement

A. General

Executive Order 12291 requires Federal agencies to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any rule that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612), we prepare and publish a regulatory flexibility analysis for any proposed rule unless the Secretary or an agancy head certifies that the rule would not have a significant economic impact on a substantial number of small entities. (See discussion under section F. below.)

The regulatory impact of the rule proposed by this document would result primarily from the statutory mandate to establish a pacemaker registry. The probable impact of this requirement would not exceed any threshold requiring analysis. Because of the widespread interest in the pacemaker program, however, we are voluntarily providing an initial impact analysis in this preamble.

The pacemaker registry will impose costs on both providers of health care services and the Federal government. It may also provide benefit payment savings to the Medicare program by enabling purchasers of pacemaker leads to make more informed decisions. Private sector costs would arise from the requirement for physicians and health care providers to supply information for the registry regarding implanted,

removed, or replaced pacemakers and pacemaker leads and, if required by the Secretary in accordance with any subsequent FDA regulations, to return any removed pacemaker or pacemaker lead to the manufacturer of the device. Federal government costs would arise from the administration and data management of the registry. Any offsetting government savings from Medicare would depend on the content and functions of the registry and its impact on provider behavior.

Potential savings cannot be estimated with any confidence at this time. Both savings (that is, reductions of program expenditures) and the costs that would result from implementation of this proposal would be functions of the number of pacemaker implants.

We estimate, based on data supplied by the industry, that 85,000 to 100,000 pacemaker implants (this estimate includes both original implants and replacements) are performed annually on Medicare beneficiaries. Further, we estimate that about 20 percent of all such procedures are for the purpose of replacing, for various reasons, pulse generators or pacemaker leads previously implanted. Because an implant involves the insertion of a pulse generator and a pacemaker lead, however, the total number of devices on which information is collected could equal approximately 170,000 to 200,000 per year.

B. Effects on Providers—Administrative Costs

We are not specifying the exact methods to be used by hospitals for collecting and retaining information about pacemakers for the registry but only the form and manner in which they are to be supplied to HCFA for transmittal to FDA. We believe, however, that a relatively simple system of recordkeeping could be established that would require minimum effort and facility expense. Administrative costs can be expressed by the following formula:

$$\text{Cost of establishing recordkeeping system (one-time)} + \text{Number of devices} \left(\begin{array}{c} \text{Cost of recording information on each device} + \text{Cost of reporting information on each device} \end{array} \right)$$

We do not have data available from the industry to calculate precisely the cost elements of the formula above. We believe that it would cost a typical hospital about $2 per device to record the required information and an additional $2 per device to report information on it. The cost of establishing a system to record, maintain, and report the information would vary considerably from hospital to hospital, depending on the record management capabilities already available, and the number of records and reports required in addition to those already maintained.

Only 2,000 hospitals performed more than 90 percent of all the pacemaker procedures for which Medicare received bills for FY 1984. Those bills showed that many hospitals performed only a few pacemaker procedures during the year, and that a very few performed several hundred. Considering both pacemakers and leads, a typical hospital would be required to maintain data on 85 to 100 devices per year. Few would have to retain data on more than 400 devices per year. Most hospitals would be required to maintain data on relatively few devices.

Proposed 42 CFR 405.380 would require hospitals to return removed devices to the manufacturer for testing if required by subsequent FDA regulations. At the present time, we do not have any estimate of the number of devices that might be returned under such subsequent regulations.

The expenses incurred by hospitals in recording, maintaining, and reporting required data would be considered reasonable costs for hospitals paid on a cost basis. Hospitals under the prospective payment system are paid for such administrative expenses related to inpatient procedures under the prospective payment amount.

C. Effects on Physicians

As discussed in the section of this preamble entitled "Statutory Authority," physicians, as well as providers of services, are responsible for submitting information to the registry. New section 1862(h)(4) of the Act also grants the Secretary the authority to deny payment to physicians for noncompliance with certain requirements specified in regulations issued by the Secretary. Thus, the statute clearly makes the provider of services and the physician who implants, removes, or replaces a pacemaker or pacemaker lead jointly responsible for complying with the regulations and proposed 42 CFR 405.232(k) and 405.252(b) so provide.

Although we expect the information to be supplied by hospitals to HCFA for the registry, if the surgeon or attending physician is found not to be supplying information necessary for the program to the hospital, authority would exist to deny payment to the physician for each case. If payment already had been made to the physician, HCFA could reduce future payments by the amounts paid for the cases denied or take other appropriate recovery action as specified in proposed 42 CFR 405.180. This action could result in denial or recovery of payments to physicians of several thousand dollars per case. As in the case of hospitals, however, we expect physicians to comply. Therefore, the provision permitting denial of payment to physicians should not have any significant economic impact. Further, because the hospital will be accumulating and reporting the data, we believe that physicians would not incur any significant additional administrative costs associated with the rule to be based on this proposal.

D. Effects on Medicare Expenditures

1. Administrative Costs

The costs for collecting, processing, and transmitting data to the registry would equal approximately $750,000 per year. Administrative costs for organizing and processing the data received would equal about $250,000 per year. Therefore, total costs to the Federal government for administering the registry would be approximately $1 million per year.

2. Denial of Payment

We anticipate support for the pacemaker program by the industry and do not anticipate noncompliance with the rule. Providers of services and physicians would be able to avoid any financial impact as a result of denial of payment for not providing information by complying with the requirements of the proposed rule. Therefore, Medicare program expenditures should not be affected by potential denials of payment.

3. Long-Term Effects on Medicare Expenditures

The proposed rule should have several long-term beneficial effects on Medicare beneficiaries and expenditures through implementation of the pacemaker registry and testing of devices: (1) Models of pacemakers with greater than expected replacement rates

could be more readily identified; and (2) the operation of the registry may lead to improvements in manufacturing and testing which, in the long term, could result in the need for fewer operations for replacements and fewer hospitalizations for adverse effects associated with pacemakers and pacemaker leads. To illustrate the magnitude of such potential savings, assume the following:

Average Medicare payment to hospital per case = $4,200

(The average national urban payment rate under the prospective payment system for DRG No. 118, pulse generator replacement, in FY 1985 is $4,208.)

Average payment to attending physician and surgeon = $3,000

20,000 operations for replacements are performed each year.

At this time, we cannot estimate how great a reduction in replacement operations would result. We expect that each percentage point reduction of the number of replacements of pacemakers and pacemaker leads would result in savings to the Medicare program of approximately $1.4 million per year.

E. Effects on Medicare Beneficiaries

Beneficiaries will not be negatively affected by the proposed rule. If payment is denied to a hospital for noncompliance with the rule, the hospital is prohibited by proposed 42 CFR 489.21(g) from increasing charges to beneficiaries to recover such denied payments. Although we do not expect implementation of the proposed rule to have a financial impact on patients in the short term, we expect long-term beneficial effects in the form of fewer complications and possibly fewer deaths associated with malfunctioning pacemaker devices. The magnitude of such effects can only be determined after the registry is implemented and we have a period of experience under the program.

F. Impact on Small Entities

The proposed rule would require the physicians and providers of services, all of which may be considered small entities under the Regulatory Flexibility Act, submit to FDA and HCFA certain information regarding pacemakers and pacemaker leads. Although this requirement would obligate hospitals to record and report the informantion, we do not believe that it represents a significant increase in hospitals'overall paperwork or human resources requirements. To a large extent, much of this information is already kept by hospitals.

Manufactures of cardiac pacemaker devices and pacemaker leads may be required by subsequent FDA regulations to test and report on devices that are returned by providers of services. We would review the impact of any such regulations at the time that they are issued. We understand from discussions with representatives in the industry, however, that the manufacturers currently test returned products for quality control purposes. We believe that any increased costs of retaining test results or of preparing reports on test resuts would not represent a significant portion of manufacturers' total costs.

G. Conclusion

We conclude, based on the analysis above, that the proposed rule is not a major rule under Executive Order 12291. Further, we have determined, and the Secretary certifies, that the proposed rule will not have a significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

Environmental Considerations

We have determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is a type that does not individually or cumulatively have a significant effort on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Information Collection Requirements

42 CFR 405.232(k) and 21 CFR 805.10 of this proposed rule contain information collections which are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980. FDA and HCFA have submitted a copy of this proposed rule to OMB for its review of these information collections. Other organizations and individuals desiring to submit comments on the information collections should direct than to FDA's Dockets Managements Branch (address above), and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., Rm. 3208, Washington, DC 20503, ATTN. Fay Iudicello.

HCFA has already obtained OMB approval of the Form HCFA-497, HCFA Pacemaker Related Data, which implements the collection of information requirements contained in this rule. The OMB control number, which reflects approval of that form, is 0938-0436.

Interested persons may, on or before (July 7, 1986), submit to FDA's Dockets Management Branch (address above) written comments regarding the proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket numbers found in brackets in the heading of this document. Received comments may be seen in FDA's Dockets Management Branch between 9 a.m. and 4 p.m, Monday through Friday.

List of Subjects in 21 CFR Part 805

Medical devices; Medicare records; Reporting and recordkeeping requirements.

List of Subjects in 42 CFR Parts 400, 405, and 489

Part 400

Grant programs-health; Health facilities; Health maintenance organizations (HMO); Medicaid, Medicare; Reporting and recordkeeping requirements.

Part 405

Administrative practice and procedure; Health facilities; Health professions; Kidney diseases; Laboratories; Medicare; Reporting and recordkeeping requirements; Rural areas; x-rays.

Part 489

Health facilities; Medicare.

Therefore, under the Social Security Act and the Deficit Reduction Act, it is proposed that Title 21 and Title 42 of the Code of Federal Regulations be amended as follows:

1. By adding new 21 CFR Part 805 to read as follows:

PART 805—CARDIAC PACEMAKER REGISTRY

Subpart A—General Provisions

Sec.
805.1 Scope.
805.3 Definitions.

Subpart B—Submission of Information

805.10 Submission of information by physicians and providers.
805.20 How to submit information.
805.25 Confidentiality.

Authority: Sec. 1862(h) of the Social Security Act and sec. 2304(d) of the Deficit Reduction Act, 98 Stat. 1068-1069 (42 U.S.C. 1395y(h), 1395y note); 21 CFR 5.10 and 5.11.

Subpart A—General Provisions

§ 805.1 Scope.

(a) FDA providing for a nationwide cardiac pacemaker registry and is requiring any physician and any provider of services who engage in the implantation, removal, or replacement of cardiac pacemaker devices and pacemaker leads for which the physician or provider of services receives or requests payment from the Medicare program to submit certain information to the registry. If the physician or the provider of services does not submit the information according to this part and 42 CFR 405.180(b), 405.232(k), and 405.380, HCFA, which administers the Medicare program, may deny payment to the physician or the provider in whole or in part. FDA will use the information submitted to the registry to track the performance of pacemakers and pacemaker leads and to perform studies and analyses regarding the use of the devices, and to transmit data to HCFA to assist HCFA in administering the Medicare program and to other Department of Health and Human Services components to carry out statutory responsibilities.

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

§ 805.3 Definitions.

(a) "FDA" means the Food and Drug Administration.

(b) "HCFA" means the Health Financing Administration.

(c) A "pacemaker" or "pacemaker device" is a device that produces priodic electrical impulses to stimulate the heart. It consists of two basic components: a pulse generator and one or more leads. See § 870.3610 for a more detailed definition.

(d) A "pacemaker lead" is a flexible, insulated wire connected at one end to a pacemaker's pulse generator and at the other end to the heart. It transmits electrical stimuli to and from the heart. See § 870.3680(b) for a more detailed definition.

(e) A "physician" is a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by applicable laws of the State in which he or she performs such function or actions. (This definition includes an osteopathic practitioner.) .

(f) A "PRO" is a Utilization Quality Control and Peer Review Organization that contracts with the Secretary of Health and Human Services to review health care services funded by the Medicare program to determine whether those services are reasonable, medically necessay, furnished in the appropriate setting, and are of a quality which meets professionally recognized standards.

(g) A "provider" is a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or (effective November 1, 1983, through September 30, 1986) a hospice, that has in effect an agreement to participate in Medicare.

(h) A "warranty" is an express or implied guarantee, under contract or State law, of the integrity of a pacemaker device or pacemaker lead and of the manufacturer's responsibility for the repair or replacement of defective parts of a pacemaker device or pacemaker lead.

(i) Any terms defined in section 201 of the Federal Food, Drug, and Cosmetic Act will have that definition.

Subpart B—Submission of Information

§ 805.10 Submission of information by physicians and providers.

A physician or a provider of services that requests or receives reimbursement from Medicare for the implantation, removal, or replacement of a cardiac pacemaker device or pacemaker lead shall submit the following information on a specified form to HCFA for inclusion in the pacemaker registry provided for by FDA under § 805.1:

(a) Provider number.

(b) Patient's health insurance claim number (HICN).

(c) Patient's name.

(d) Date of the procedure.

(e) Identification number (used by PRO's) and name of the physician who ordered the procedure.

(f) Identification number (used by PRO's) and name of the operating physician.

(g) For each device (pulse generator, atrial lead, ventricular lead) implanted during the procedure about which the report is being made: the name of the manufacturer, model number, serial number, and the warranty expiration date.

(h) For each device (pulse generator, atrial lead, ventricular lead) removed or replaced during the procedure about which the report is being made: The name of the manufacturer; model number; serial number; the warranty expiration date; the date the device was initially implanted; whether a device that was replaced was left in the body; if the device was not left in the body, whether it was returned to the manufacturer; if the pulse generator was removed or replaced, whether a lead also was removed or replaced; and, if the procedure involved a lead implant, whether a former lead was left in the body.

§ 805.20 How to submit information.

Information shall be submitted to the registry in the form and manner required under general instructions of the Medicare program (see 42 CFR 405.232(k)).

§ 805.25 Confidentiality.

(a) FDA and HCFA will keep confidential, and will not reveal to the public, any specific information that identifies by name a recipient of any pacemaker device or lead or that would otherwise identify a specific recipient.

(b) All other information under this part is available for public disclosure in accordance with Part 20.

PART 400—INTRODUCTION; DEFINITIONS

Subpart B—Definitions

2. The authority citation for 42 CFR Part 400 continues to read as follows:

Authority: Secs 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

3. In § 400.200 by adding the definition of "FDA" in alphabetical order to read as follows:

§ 400.200 General Definitions.

* * * * *

"FDA" stands for Food and Drug Administration.

* * * * *

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

4. The table of contents is amended by adding the title of § 405.180, revising the title of § 405.252, and adding a center heading and § 405.380 to read as follows:

Subpart A—Hospital Insurance Benefits

* * * * *

§ 405.180 Denial of payment for implantation or replacement of cardiac pacemakers and leads; conditions.

* * * * *

Subpart B—Supplementary Medical Insurance Benefits; Enrollment, Coverage, Exclusions, and Payment

* * * * *

§ 405.252 Conditions affecting payment of benefits.

* * * * *

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

* * * * *

Subpart A—Hospital Insurance Benefits

5. The authority citation for 42 CFR Part 405, Subpart A, continues to read as follows:

Authority: Secs. 1102, 1814, 1815, 1861, 1866(d), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395g, 1395x, 1395cc(d), and 1395hh).

6. By adding § 405.180 to read as follows:

§ 405.180 Denial of payment for implantation or replacement of cardiac pacemakers and leads; conditions.

(a) Notwithstanding any other provision of this chapter, payment will be denied to a provider of services with respect to the implantation, removal, or replacement of any cardiac pacemaker or pacemaker lead when, and for so long as, HCFA determines, in accordance with the procedures established in paragraph (b) of this section, that:

(1) The provider has failed to submit information required by FDA (under 21 CFR Part 805) for the pacemaker registry, as required by § 405.232(k).

(2) The provider did not return the removed pacemaker or pacemaker lead to the manufacturer of the pacemaker or pacemaker lead for testing and reporting when required to do so under FDA regulations.

(3) The provider has made any charges to Medicare beneficiaries in violation of § 405.380.

(4) The manufacturer to whom any pacemaker or pacemaker lead was returned in accordance with FDA regulations has failed to test the device and report to the provider if required under FDA regulations.

(b)(1) Whenever HCFA determines that a physician or a provider of services has failed to meet any of the requirements contained in §§ 405.232(k) or 405.380 or 21 CFR Part 805, HCFA will send written notice of its determination to the affected party at least 45 days before the determination becomes effective.

(2) The notice will state the reasons for the determination and its effective date, and will provide the affected party 45 days from the date of the notice to submit information or evidence to demonstrate that HCFA's determination is in error. The notice will also inform the affected party of its right to a hearing.

(3) Following the expiration of the 45-day notice period provided in paragraph (b)(1) of this section, HCFA's determination and notice constitute an "initial determination" and a "notice of initial determination" for purposes of the administrative and judicial appeal procedures specified in Part 405, Subpart O of this chapter.

Subpart B—Supplementary Medical Insurance Benefits; Enrollment, Coverage, Exclusions, and Payment

7. The authority citation for 42 CFR Part 405, Subpart B, continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

8. In § 405.232 by adding paragraph (k) to read as follows:

§ 405.232 Medical and other health services; conditions, limitations, and exclusions.

* * * * *

(k) *Cardiac pacemakers and leads.* For cardiac pacemakers and pacemaker leads covered as prosthetic devices under § 405.231(h), physicians and providers of services engaged in the implantation, removal, or replacement of cardiac pacemakers and pacemaker leads must submit information required by FDA under 21 CFR Part 805 for the pacemaker registry to HCFA in the form and manner set forth in the general instructions of the Medicare program.

9. In § 405.252 by revising the section heading and by adding paragraph (b) to read as follows:

§ 405.252 Conditions affecting payment of benefits.

* * * * *

(b) *Denial of payment for cardiac pacemakers and leads.* Payment may be denied in whole or in part to a physician who performs the implantation, removal, or replacement of any cardiac pacemaker or pacemaker lead when, and for so long as, HCFA determines in accordance with the procedures established in § 405.180(b) that the physician does not meet the reporting requirements in § 405.232(k).

* * * * *

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

10. The authority citation for Part 405, Subpart C, continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act as amended (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

11. By adding an undesignated center heading at the end of Subpart C and new § 405.380 to read as follows:

PAYMENT REQUIREMENTS FOR CARDIAC PACEMAKERS

§ 405.380 Return and testing of pacemakers or leads.

In cases in which HCFA notifies a provider that the return of any removed or replaced pacemaker or pacemaker lead for testing and reporting is required under FDA regulations with respect to a pacemaker or pacemaker lead or a type or class of pacemakers or pacemaker leads, providers of services are prohibited from charging Medicare beneficiaries for any services furnished in connection with such removal or replacement if the device has not been returned to the manufacturer as required.

Subpart O—Providers of Services, Emergency Service Hospitals, Independent Laboratories, Suppliers of Portable X-Ray Services, Ambulatory Surgical Centers, End-Stage Renal Disease Treatment Facilities, and Persons; Determinations and Appeals Procedures

12. The authority citation for 42 CFR Part 405, Subpart O, continues to read as follows:

Authority: Secs. 1102, 1866, 1869, 1871, and 1872 of the Social Security Act; 42 U.S.C. 1302, 1395cc, 1395ff, 1395hh, and 1395ii; unless otherwise noted.

13. In § 405.1502 by adding new paragraph (g) to read as follows:

§ 405.1502 Initial determinations.

* * * * *

(g) A determination to deny payment under §§ 405.180 or 405.252, pertaining to cardiac pacemakers and the pacemaker registry.

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

14. The authority citation for 42 CFR Part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, and 1395x, 1395aa, 1395cc, and 1395hh).

15. In § 489.21 the introductory text is repeated unchanged for the convenience of the reader and new paragraph (g) is added to read as follows:

§ 489.21 Specific limitations on charges.

Except as specified in Subpart C of this part, the provider agrees not to charge a beneficiary for any of the following:

* * * * *

(g) Items and services furnished in connection with the implantation of cardiac pacemakers or pacemaker leads when HCFA denies payment for those devices under §§ 405.180 or 405.252 of this chapter.

Dated: February 2, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

Dated: March 5, 1986.

Henry R. Desmarais,

Acting Administrator of Health Care Financing Administration.

Dated: April 8, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 86–10066 Filed 5–5–86; 8:45 am]

BILLING CODE 4160–01–M

federal register

Tuesday
May 6, 1986

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 25 and 52
Federal Acquisition Regulation; Interim Rule With Request for Comment

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[Federal Acquisition Circular 84-17]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: Federal Acquisition Circular (FAC) 84-17 amends the Federal Acquisition Regulation (FAR) with respect to Government purchases of products from countries designated under the Caribbean Basin Economic Recovery Act.

DATES: *Effective date:* May 6, 1986.

Comment Date: Comments must be received on or before July 7, 1986. Please cite FAC 84-17 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: GSA, Attn: FAR Secretariat, 18th & F Streets NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The United States Trade Representative, under the authority delegated by the President in section 1-201 of Executive Order 12260 of December 31, 1980, has determined that countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et seq.) provide appropriate reciprocal competitive government procurement opportunities for United States products and suppliers of such products.

The Trade Representative made a public announcement to this effect in the **Federal Register** on February 27, 1986 (51 FR 6964-6965), and by means of an additional notice in the **Federal Register** on April 4, 1986 (51 FR 11660), further requested implementation of such policies in the Federal Acquisition Regulation to be effective for solicitations issued after April 30, 1986.

B. Regulatory Flexibility Act

In the initial regulatory flexibility analysis it was concluded that this interim rule is not likely to have a significant economic impact on a substantial number of small entities. However, publication of this rule as an interim rule will afford the public the opportunity to comment with respect to this rule's economic impact on small entities, and such comments will be considered in the formulation of the final regulatory flexibility analysis and the final rule.

C. Determination to Issue an Interim Regulation

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that the regulation in FAC 84-17 must be issued as an interim regulation in compliance with the request from the Office of the U.S. Trade Representative that the FAR be amended by April 30, 1986, to implement the Caribbean Basin Initiative policy published in the **Federal Register** on February 27, 1986 (51 FR 6964-6965).

D. Paperwork Reduction Act

FAC 84-17 does not contain any additional information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: May 2, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-17 is effective immediately.

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

T.C. Golden,

Administrator.

S.J. Evans,

Assistant Administrator for Procurement.

Federal Acquisition Circular (FAC) 84-17 amends the Federal Acquisition Regulation (FAR) as specified below:

Item—Revision to Subpart 25.4, Concerning Caribbean Basin Countries

Subpart 25.4, Purchases Under the Trade Agreements Act of 1979, and the clauses at 52.225-8 and 52.225-9 are revised to include requirements with respect to acquisitions from the Caribbean Basin countries and to delete a reference to the Civil Aeronautics Board, which has been disestablished.

Therefore, 48 CFR Parts 25 and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 25—FOREIGN ACQUISITION

2. Section 25.400 is revised to read as follows:

25.400 Scope of subpart.

This subpart provides additional policies and procedures peculiar to acquisitions subject to the Agreement on Government Procurement and the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582) and acquisitions from countries designated under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et seq.).

3. Section 25.401 is amended by adding in alphabetical sequence two definitions, "Caribbean Basin country" and "Caribbean Basin country end product," and by revising the definition "Eligible product" to read as follows:

25.401 Definitions.

"Caribbean Basin country," as used in this subpart, means a country designated by the President as a beneficiary under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et seq.) and listed below:

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
British Virgin Islands
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Honduras
Jamaica
Montserrat
Netherlands Antilles
Panama
St. Christopher-Nevis
St. Lucia
St. Vincent and the Grenadines
Tobago
Trinidad

"Caribbean Basin country end product," as used in this subpart, means an article that: (a) Is wholly the growth, product, or manufacture of the Caribbean Basin country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a

new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term *includes* services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. The term *excludes* products that are excluded from duty free treatment for Caribbean countries under 19 U.S.C. 2703(b), which presently are—

(1) Textiles and apparel articles that are subject to textile agreements;

(2) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(3) Tuna, prepared or preserved in any manner in airtight containers;

(4) Petroleum, or any product derived from petroleum; and

(5) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.

* * * * *

"Eligible product," as used in this subpart, means a designated country end product or a Caribbean Basin country end product.

4. Section 25.402 is amended by adding a new paragraph (b); by revising the existing paragraph (b) and redesignating it as paragraph (c); and by redesignating the existing paragraphs (c) and (d) as (d) and (e) as follows:

25.402 Policy

* * * * *

(b) The U.S. Trade Representative has determined that in order to promote further the economic recovery of the Caribbean Basin countries (as defined in 25.401), products originating in those countries which are eligible for duty free treatment under the Caribbean Basin Economic Recovery Act shall be treated as eligible products for the purposes of this subpart (see 51 FR 6964–6965, February 27, 1986). This determination is effective until September 30, 1995, unless otherwise extended by the U.S. Trade Representative by means of a notice in the Federal Register.

(c) Except when waived under section 302(b)(2) of the Trade Agreements Act, there shall be no purchases of foreign end products subject to the Act unless the foreign end products are designated country end products or Caribbean Basin country end products.

* * * * *

5. Section 25.403 is amended by adding paragraph (m) to read as follows:

25.403 Exceptions.

* * * * *

(m) Purchases of products that are excluded from duty free treatment for Caribbean countries under 19 U.S.C. 2703 (b), which presently are—

(1) Textiles and apparel articles that are subject to textile agreements;

(2) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(3) Tuna, prepared or preserved in any manner in airtight containers;

(4) Petroleum, or any product derived from petroleum; and

(5) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.

6. Section 25.405 is amended by revising paragraph (d) to read as follows:

25.405 Procedures.

* * * * *

(d) Solicitations shall not specify that offers involving eligible products from designated countries or Caribbean Basin countries shall be submitted in the English language and in U.S. dollars.

* * * * *

25.406 [Amended]

7. Section 25.406 is amended by removing in the alphabetical listing the agency "Civil Aeronautics Board".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.225–8 is amended by inserting in the introductory text a colon following the word "provision" and removing the remainder of the sentence; by removing in the title of the provision the date "(APR 1984)" and inserting in its place the date "(MAY 1986)"; by revising paragraphs (a) and (c) of the provision; and by removing both derivation lines following "(End of provision)" as follows:

52.225–8 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.

* * * * *

(a) The offeror hereby certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act—Trade Agreements Act—Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

* * * * *

(c) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are designated country end products or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(1) The offeror certifies that the following supplies qualify as "designated country end products" as that term is defined in the clause entitled "Buy American Act—Trade Agreements Act—Balance of Payments Program":

(Insert line item numbers)

(2) The offeror certifies that the following supplies qualify as "Caribbean Basin country end products" as that term is defined in the clause entitled "Buy American Act—Trade Agreements Act—Balance of Payments Program":

(Insert line item numbers)

* * * * *

9. Section 52.225–9 is amended by removing in the title of the clause the date "(APR 1985)" and inserting in its place the date "(MAY 1986)"; by adding alphabetically in paragraph (a) the definition "Caribbean Basin country end product"; and by revising the introductory text of paragraph (a) and (b) to read as follows:

52.225–9 Buy American Act—Trade Agreements Act—Balance of Payments Program.

* * * * *

(a) This clause implements the Buy American Act (41 U.S.C. 10), the Trade Agreements Act of 1979 (19 U.S.C. 2501–2582), and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet

the requirements for classification as designated country end products or Caribbean Basin country end products.

"Caribbean Basin country end product," as used in this clause, means an article that: (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. The term *excludes* products that are excluded from duty free treatment for Caribbean countries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of (i) textiles and apparel articles that are subject to textile agreements; (ii) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under title V of the Trade Act of 1974; (iii) tuna, prepared or preserved in any manner in airtight containers; (iv) petroleum, or any product derived from petroleum; and (v) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.

* * * * *

(b) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate." An offer certifying that a designated country end product or a Caribbean Basin country end product will be supplied requires the Contractor to supply a designated country end product or a Caribbean Basin country end product or, at the Contractor's option, a domestic end product. Contractors may not supply a foreign end product with a total value of $. . . *[Contracting Officers shall insert the dollar threshold amount distributed through agency procedures in accordance with FAR 25.402(a)]* or more unless the foreign end product is a designated country end product or a Caribbean Basin country end product (see FAR 25.401), or unless a waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

* * * * *

[FR Doc. 86-10218 Filed 5-5-86; 8:45 am]

BILLING CODE 6820-61-M

Federal Register

Tuesday
May 6, 1986

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives: Pratt & Whitney Canada (PWC) PT6A-42 Turboprop Engines; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ANE-29; Amdt. 39-5266]

Airworthiness Directives: Pratt & Whitney Canada (PWC) PT6A-42 Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the removal and replacement of the PT6A-42 first stage compressor hub Part Number (P/N) 3030356 at or before 5,000 cycles in accordance with PWC Service Bulletin (SB) 3002, Revision 12. The AD is needed to prevent first stage compressor hub failure and possible engine failure.

DATES: Effective June 5, 1986.

Compliance schedule—as prescribed in body of AD.

Incorporation by reference—approved by the Director of the Federal Register effective June 5, 1986.

ADDRESSES: The applicable SB may be obtained from Pratt & Whitney Canada, Box 10, Longueuil, Quebec, Canada J4K 4X9.

A copy of the SB is contained in Rules Docket Number 85-ANE-29, in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Diane Kirk, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7082.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD which requires the removal and replacement of the first stage compressor hub on certain PT6A-42 turboprop engines was published in the **Federal Register** on November 18, 1985 (50 FR 12172). The FAA has determined that the originally published low cycle fatigue (LCF) life limit for the stage 1 compressor hub P/N 3030356 on certain PWC PT6A-42 turboprop engines must be adjusted downward based on a re-analysis by PWC. This action is required to assure against hub and possible engine failures.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received.

The commenter suggested that a list of applicable engine serial numbers be included for ease of locating the subject hubs. The FAA has added the engine serial numbers as suggested.

Conclusion

The FAA has determined that this regulation involves 803 engines installed on Beech Super King Air B200T and B200CT Aircraft. The operator will receive financial credit for the subject hub on a pro-rated basis during engine overhaul. These aircraft are not operated by small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air Transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulation (FAR) as follows:

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

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

2. By adding to § 39.13 the following new AD:

Pratt & Whitney Canada: Applies to Pratt & Whitney Canada (PWC) PT6A-42 turboprop engines.

Compliance is required as indicated unless already accomplished.

To prevent first stage compressor hub failure, and possible engine failure, accomplish the following:

Remove from service Part Number(P/N) 3030356 first stage compressor hub on PWC Engine Model PT6A-42 with engine Serial Numbers 93001 thru 93604 inclusive at or before 5,000 total cycles in accordance with PWC Service Bulletin (SB) 3002, Revision 12, dated November 9, 1983, or FAA approved equivalent.

Note.—The 15,000 hour life limit remains unaffected by this airworthiness directive (AD).

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

PWC SB 3002, Revision 12, dated November 9, 1983, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552 (a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Pratt & Whitney Canada, Longueuil, Quebec, Canada, J4K-4X9. This document also may be examined at the Office of the Regional Counsel, Rules Docket 85-ANE-29, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective on June 5, 1986.

Issued in Burlington, Massachusetts, on March 21, 1986.

Clyde DeHart, Jr.

Acting Director, New England Region.

[FR Doc. 86-8307 Filed 5-5-86; 9:52 am]

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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