

Federal Register

Tuesday
May 13, 1986

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Air Carriers

Transportation Department

Aviation Safety

Federal Aviation Administration

Commodity Futures

Commodity Futures Trading Commission

Drug Traffic Control

Drug Enforcement Administration

Educational Research

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Fisheries

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Flood Insurance

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Farmers Home Administration

Motor Carriers

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Organization and Functions (Government Agencies)

Defense Department

Surface Mining

Surface Mining Reclamation and Enforcement Office

Superfund

Federal Emergency Management Agency



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Rules and Regulations

Federal Register

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

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1940 and 1944

Housing Preservation Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

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

The HPG program will provide rehabilitated and repaired homeownership housing for very low- and low-income families in rural areas. Grants will be made to nonprofit and public entities to establish and operate a rehabilitation and repair program. The grant funds provided by FmHA will reduce the construction costs to homeowners, thereby assisting very low- and low-income families to live in adequate housing units. Cost reductions may be achieved by the HPG grantee with a variety of financial assistance mechanisms, including deferred payment loans, interest reductions on private lending, low-interest direct loans, direct grants, etc., based on need of the recipient, cost of rehabilitation and repairs, repayment ability, and needs of the community.

This action implements the homeowner aspect of the program as mandated by Congress. FmHA intends to continue to develop the rental repair and rehabilitation portion of the HPG program based upon the constructive comments received in response to our requests contained in the proposed rule

publication of July 26, 1985 (50 FR 30429).

EFFECTIVE DATE: June 12, 1986.

FOR FURTHER INFORMATION CONTACT: John H. Pentecost, Senior Loan Officer, Special Authorities Branch, Multifamily Housing Processing Division, FmHA, USDA, Room 5341, South Agriculture Building, Washington, DC 20250; telephone: (202) 382-8983 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: FmHA is publishing on this date a Notice in the Federal Register advising that preapplications must be submitted to the Farmers Home Administration within seventy-five (75) days. The Notice is being published in accordance with § 1944.678 of Subpart N of Part 1944. Incomplete preapplications and those received after the deadline, will be returned without further review. Organizations interested in applying for HPG funding are encouraged to contact their State FmHA Office as soon as possible to receive application information.

This action has been reviewed under USDA procedures established in Departmental Regulations 1512-1 which implements Executive Order 12291, and has been determined to be "nonmajor." This action has been determined to be "nonmajor" since the annual effect on the economy is less than \$100 million and there will be no increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action will not create any significant recordkeeping and reporting burdens or substantially increase costs to the Government and the public. The impact on proposed budget levels is dependent upon funding levels provided by Congress. \$19,140,000 is available to the program through September 30, 1986.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.433—Housing Preservation Grants. The FmHA programs and projects which are affected by this instruction are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with

State and local officials (7 CFR Part 3015, Subpart V; 48 FR 29112, June 24, 1983).

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

Vance L. Clark, Administrator, Farmers Home Administration has determined that the proposed action will not have a significant impact on a substantial number of small entities because the relatively narrow scope of the program and the limited amount of funds currently available will restrict the number of applicants eligible to participate in the program. FmHA anticipates funding approximately one hundred grantees nationwide.

Discussion of Final Rule

A proposed rule was published in the Federal Register (50 FR 30429) on July 26, 1985 with a 60-day comment period, ending September 24, 1985. The supplementary information published as part of the proposed rulemaking fully discussed the program objectives, implementation alternatives, major policies, and significant operational issues. In response to the notice of proposed rulemaking, 29 comments were received from a variety of public and private nonprofit groups addressing the specific proposed regulations for the homeowner portion of the program. In addition, 15 of the 29 respondents provided very beneficial information for FmHA's implementation of the rental aspect of the HPG program.

Substantive changes to the previously published HPG regulations as a result of the comments are summarized below:

1. Section 1944.651(a): One respondent pointed out that the proposed regulations did not appear to give priority or sufficient attention to the needs of handicapped persons in housing rehabilitation. Improved accessibility by handicapped persons is an eligible activity as part of housing preservation activities and, accordingly, is now covered in part of the opening statement of purpose of the program to emphasize its importance.

2. *Section 1944.656(g)*: Under the definition of "Organization," a consortium was restricted to "general local governments." In response to a comment that this was unduly restrictive where a State government may be an important member of a consortium, the language "general local" was dropped.

3. *Section 1944.656(g)*: One respondent indicated that the Agency's policy requiring local participation from the area being served by nonprofit organizations is unnecessary and restrictive (in terms of serving rural areas that may not have such a group, but which could be served by a statewide or regional entity). FmHA acknowledges that this may create some hardships and has modified this section. While local participation is still preferred, the requirement for consultation with the local government and public notice should assure the local awareness and commitment to the project which was the rationale for previously mandating local participation.

4. *Section 1944.656(i)*: In response to several comments on the definition of "Housing preservation" the definition was revised and clarified. Previously, it was not clear that the unit being "preserved" must meet FmHA thermal standards and FmHA development standards for existing structures (either minimum property standards or applicable local codes based on voluntary national model codes that apply to rehabilitated structures). FmHA intends that units which receive assistance under this program must meet such standards, not just part of the unit. The Agency's objective in providing assistance to families is for preservation of their units where the assistance results in an energy efficient unit that will meet code standards. Several comments indicated that this would be burdensome and unduly expensive and limit the number of units that could be assisted under the program. The Agency points out that the enabling legislation sets these standards and the Agency agrees with the apparent intent of the law not to use this program as a repair program similar to its section 504 repair program which can be used to make essential repairs without bringing the unit up to code standards. As a further note, FmHA is revising its definition of development standards in FmHA Instruction 1924-A (Subpart A of Part 1924 of Chapter XVIII of Title 7 of the Code of Federal Regulations) to include standards contained in any of the voluntary national model codes as well as the

Minimum Property Standards for new and existing structures. Until that regulation is in effect, FmHA will review development standards proposed by applicants if they are based on national model codes. (§ 1944.656(i) has been redesignated § 1944.656(e).)

5. *Section 1944.658(b)*: Several respondents pointed out that the proposed rule appeared unduly restrictive in terms of organizational experience of an applicant who may not have had housing related experience in the past. It is FmHA's intention to fund organizations that will be able to operate this program successfully. One way to assure that is to fund entities experienced in operating housing programs. However, if the organization has no experience, FmHA sees the necessity of the applicant at least to hire staff with experience to operate the program. The section of the regulations on "Applicant Eligibility" now reflects that the organization or members of its staff must have experience in operating a housing program.

6. *Section 1944.660(a)*: In response to comments that FmHA policies concerning third party representatives of applicants was not clear, this section was revised to specify that an applicant's authorized representative may not receive any direct or indirect benefit after the award of the grant.

7. *Section 1944.661*: FmHA received comments that the requirements for eligibility of a homeowner for HPG assistance were overly restrictive in terms of being an occupant of the unit and owning it for a period of time prior to receiving assistance. This section has been revised for clarity to indicate that any recipient of HPG assistance must meet the income definitions required by law, must be an owner of the unit for at least one year prior to receiving assistance, and should be the intended occupant of the unit after receiving assistance. FmHA believes these requirements to be realistic in terms of assuring that the HPG program reach low- and very low-income families now residing in substandard housing and assist them to improve the units in which they are residing. Without these provisions, neither FmHA nor grantees will be able to prevent the use of program funds by new owners or creating an environment where there might be third party beneficiaries or windfall profits. In addition, there were comments concerning the requirement that the units be a "single family dwelling;" the Agency notes that this definition includes townhouses or duplex type units where each unit is separately owned.

8. *Section 1944.661(a)(2)(i)*: One respondent pointed out that there was inconsistency between sections of the requirements in terms of length of occupancy and/or ownership. This section has been revised to delete the occupancy requirement of one year prior to assistance but has retained the one year ownership requirement. However, in the case of divided interest in ownership, occupancy is required, though the term has been corrected to reflect one year, not ten years as the proposed rule stated. Later, in § 1944.661(b)(3), the occupant of the unit may be eligible for assistance where there is no recorded deed or evidence of ownership if they have occupied the unit for 10 years and is the apparent owner of the property by having paid taxes, etc. FmHA believes these different terms provide adequate assurance of assisting intended recipients under a wide range of ownership situations.

9. *Section 1944.664*: Comments on this section dealing with eligible activities focused on the following points:

a. First was the applicability of FmHA's thermal standards and the need to bring the unit as a whole up to code standards, not just one or two individual components of the structure. This has been covered in paragraph 4 above.

b. Second, FmHA made revisions based on specific recommendations for clarity and inclusiveness, such as: including foundations with "structural supports;" noting that the funds can be used for materials and labor; including overcrowding as a health hazard; and combining all the incidental expenses related to HPG activities under one paragraph. The Agency also added to this last item the requirement that such incidental costs be in accordance with local prevailing rates and so documented.

c. Third, as a result of numerous comments, the regulations now permit the use of HPG funds to reimburse employees of the grantee where the grantee acts as the construction contractor. Several conditions must be met where the grantee chooses this option, including demonstration of cost savings, third party inspection of the work performed, a process for assuring consumer protection, and adequate accounting procedures to separate administrative costs from construction and labor costs.

d. Fourth, based on recommendations, the regulations concerning the use of funds for "convenience and cosmetic purposes" have been clarified, without changing the basic concept or the 25 percent limitation on use of HPG funds for such purpose.

e. Finally, one respondent requested modification of the prohibition against refinancing debts of the homeowner. FmHA will not allow such practice because such refinancing may well result in the actual use of funds for purposes other than home rehabilitation; given the limited funds available, this may create a serious drain on program resources.

10. Section 1944.666: FmHA received several comments on the rules governing use of HPC funds for administrative purposes. Although the 20 percent limitation for administration was accepted, by permitting grantees to act as construction contractors, several revisions were made to clarify that resources for such activities must come from nonadministrative funds and to permit the grantee to accept compensation from HPC recipient homeowners for such labor costs. Second, a revision was made to clarify that the 20 percent limitation applies to both direct and indirect administrative costs.

11. Section 1944.673: As a result of several comments noting the complexity of the environmental review process for the program, these requirements have been modified to some extent. An HPC grant has been defined as a Class I action under the requirements of 7 CFR Part 1940, Subpart G. This means that an applicant need submit only limited environmental information on the area to be affected and that FmHA completes a relatively brief, checklist-type environmental assessment of the preapplication. During the grantee's operation of the HPC program, no FmHA environmental review will be conducted of a proposed unit unless the unit: (1) is located within a floodpath or wetland, or (2) is listed or eligible for listing on the National Register of Historic Places and the Advisory Council on Historic Preservation does not concur in the proposed work. (§ 1944.673 has been redesignated § 1944.672.)

12. Section 1944.673: This is a new section created to respond to comments from the Advisory Council on Historic Preservation which resulted in a Programmatic Memorandum of Agreement (PMOA) between FmHA, the Advisory Council and the National Conference of State Historic Preservation Officers. The PMOA is made part of the FmHA regulations as FmHA Instruction 2000-FF, Exhibit A (available in any FmHA office). In brief, applicants are required to consult with their respective State Historic Preservation Officer (SHPO), in both the design and implementation stages of

their programs, as to how potential impacts to properties listed or eligible for listing on the National Register of Historic Places will be identified and treated. When this consultation process does not achieve a satisfactory result between the applicant, SHPO, and the Advisory Council on the Advisory Council on Historic Preservation, FmHA will intervene as necessary and consult directly with the parties to resolve the matter. FmHA believes this process will make it easier for both the grantees and the FmHA field staff to comply with historic preservation requirements.

13. Section 1944.676: One respondent pointed out that, as part of their application, grantees should indicate what provisions they have for disposition of security instruments when or if it loses its legal status after the end of the grant. Language has been added to this effect. No other substantive changes were made in this section. FmHA has edited the language for clarification and has added appropriate language reflecting other revisions discussed above.

14. Section 1944.679: This section received considerable comments and many recommendations for revisions. FmHA has adopted many of the suggestions and has revised this section completely. Nonetheless, even with the language changes, the Agency considers the end product consistent with the proposed rule. This in large part due to the fact that the original was based upon legislative requirements governing selection of recipients and any final rule would have to be likewise consistent with the law. Readers are encouraged to review this section; every effort has been made to make the criteria and assignment of rating points as objective as possible based on the preapplication submission. In response to several comments, the criteria are weighted to give emphasis to applicants who will be most productive, cost effective, and experienced (see comment 5 above concerning organization and/or staff experience). As required by law, additional points are given for proposals which are to be undertaken in remote rural areas, minimize use of administrative funds, alleviate overcrowding, and, if applicable, continue a successful HPC program. The criteria for leveraging resources is contained in § 1944.679(b)(2) which relates to maximizing use of grant funds. Exhibit D provides a summary of the criteria for use by FmHA staff in rating proposals.

15. Section 1944.683: Based upon several comments received on the lack of clear guidance on reporting and the

need for obtaining information which can be computerized. FmHA has revised this section on reporting requirements and added Exhibit E as a guide for grantees. The only additional information requested is on the homeowners assisted under the program. Some revisions were made in § 1944.683(d) to give the State Director clear authority to take appropriate action if reports are not submitted in a timely fashion or if the grantee has made unsatisfactory progress in the execution of the program.

16. Section 1944.688: Comments were received on this section concerning the need to specify that audits would be an eligible project cost upon grant completion or termination. This section was also reordered for greater clarity.

17. Exhibit A, the HPC Grant Agreement, was modified to add investigations to litigation, claims and audits as a reason for retention of records after the usual three year period.

The following additional comments were received which were fully considered but have not been incorporated in the regulations:

1. Thirteen respondents provided comments and advice to FmHA for implementing the rental aspect of the housing preservation program. The comments submitted will be very beneficial. In response to several comments critical of the Agency's selection of implementing the homeowner aspect first, FmHA reiterates its intention to proceed in developing the regulatory revisions and additions necessary for the rental program.

2. Comments were received on requirements contained in the regulations which were included because they were stipulated in the law. No changes were made in these areas which include: The points in the project selection criteria for leveraging; the distribution of funds to all states; and the stipulation that grantees not receive more than 50 percent of a state's allocation when there is more than one eligible applicant.

3. One respondent pointed out that requiring the project to be operated in an area of concentration of substandard housing was inconsistent with the focus on rural areas and would preclude operation of a project in smaller communities with scattered units needing HPC assistance. FmHA has not modified its requirements in this regard nor does the Agency interpret this requirement as strictly as the respondent. Given limited resources, FmHA strongly encourages applicants to develop their projects to maximize its

impact by focusing its resources on target areas. This has no correlation to size of community. In fact, many rural communities and counties have pockets of substandard housing occupied by low income families needing the type of assistance which can be provided under the HPG program.

4. A respondent suggested limiting the amount of HPG funds for each unit. FmHA has not done so since the manner of assistance is potentially so varied that any limit imposed would provide an artificial constraint to the grantee. In addition, the project selection criteria, with its emphasis on cost efficiency and maximizing the potential number of units assisted, will require grantees to set their own limits or generate outside resources in order to be competitive. This process is more realistic and provides the intended flexibility to the grantees to tailor their HPG program to their service and needs.

5. Several respondents noted that the language for use of HPG funds for mobile/manufactured homes restricted the use of funds, to units of this nature, to recipients who owned both the site and the unit. FmHA believes to do otherwise would be inconsistent, even though the Agency recognizes the need to assist unit owners in rental parks. Such assistance will be considered under the rental aspect of the program. Also, regarding manufactured housing/mobile homes, assistance is restricted to units on a permanent foundation. This is consistent with FmHA policies for this type of unit; at a minimum, such units must be permanently placed with any likelihood of future mobility absent.

6. Several comments were received concerning inspections of work financed under the HPG program, specifically whether a member of a consortium applicant could provide inspection services and whether it would even be feasible or possible to have third-party inspections in some areas. FmHA's policy in this area is based on the need to provide protection to the beneficiary low- and very low-income families, and to provide these families assurance that they are receiving full benefit. In addition, FmHA and grantees both need assurance that the work being performed under the HPG program is properly executed. In any event, FmHA's policy as applied to a consortium would mandate contract or fee inspections.

7. One comment requested that administrative funds include the cost of preparing an application as an eligible cost. FmHA has not done so since HPG funds for administration are limited and since the Agency believes this cost should be borne by the applicant similar

to its requirements for other FmHA programs.

8. FmHA was asked to provide additional guidance on program administration to applicants and grantees and was also advised that the current requirements for applicant experience placed new organizations at a competitive disadvantage. The Agency considers the current regulations reflective of the apparent legislative intent to assure maximum grantee flexibility to operate its program with little interference or direction from FmHA. The rationale behind the program's requirement for applicant experience and capacity (see comment 5 revisions made) is also indicative of the relationship FmHA envisions between grantees and the Agency. Administrative guidance beyond the current requirements currently in the regulation is available from FmHA on an informal and as needed basis.

9. Comments were received expressing concern that FmHA might allocate funds to the section 504 repair grant program prior to using all HPG funds for acceptable HPG projects. 7 CFR Part 1940, Subpart L indicates that the National Office may reallocate funds among states to fund HPG projects. It is the Agency's intent to fund as many viable HPG projects as funds permit. Reallocation of funds to the section 504 program and their subsequent redistribution will be after that.

10. One respondent focused on several issues critical to Indian tribes and organizations. FmHA believes the current regulations contain sufficient flexibility to address the concerns raised. First, fund distribution includes a National Office reserve which can be made available to Indian organization applicants upon request by a state office if necessary. The Agency has not created a specific allocation for such entities, believing that they should be competitive with other applications within the state. Where there is a multistate Indian nation requesting assistance, the specific location of the applicant will determine the State to which to apply for funds. In this type of instance there would be no limitation to using the funds in other states where the grantee is authorized to operate. Second, regarding land tenure or ownership of housing by an Indian family homeowner on a reservation, the current regulations provide considerable latitude in the eligibility of homeowners for assistance. If a situation arises outside of what is covered under the regulations, the waiver provision contained in § 1944.690 can be used to request consideration. This is also applicable for code standards and alternative technology

applicable to or in use on reservations. Finally, no revision to the regulation has been made to address the issue of Indian preference for assistance. The Agency policies on equal opportunity for any assistance provided to or through the program apply.

11. One respondent pointed out that the regulations and grant agreement prohibit lump sum drawdowns and provided language to modify the grant agreement. No changes are made to the proposed rule or the grant agreement since they currently permit draws based on program need for grant funds. Applicants are required to submit a financial plan with their preapplication.

12. Additional comments were received to clarify the language concerning the restrictions created by using HPG funds for nonexpendable personal property. These requirements are taken directly from OMB circulars which the Department of Agriculture and FmHA have adopted.

13. Comments were received indicating that the penalty clauses stipulating repayment of grant funds with interest in the event of grantee default on the program were unduly severe. FmHA has retained this provision to provide the authority to recapture all grant funds in any situation where a grantee or its representatives default on its grant agreement. The Agency considers this prudent grant management.

14. A respondent strongly encouraged publication in the "Federal Register" of Exhibit C, which contains administrative guidance to FmHA field staff. FmHA will not publish the Exhibit with the final rule in order to reduce publishing cost. However, the Exhibit is available to all interested parties from any FmHA office.

Several revisions were made to the proposed rule based upon internal comments and in an effort to simplify future revisions to regulations with crosscutting provisions. These include:

1. *Section 1944.675*: This section has been reworded to reflect the reference to 7 CFR Part 1940, Subpart L, Methodology and Formulas for Allocation of Loan and Grant Program Funds. That subpart contains virtually the same information that was previously contained in this section.

2. *Section 1944.690*: The exception authority was modified to remove the apparent limitation of waiver requests to the State Directors; such constraint was not intended.

Finally, conforming changes are being made to Title 7, Part 1940, Subpart G, Environmental Program reflecting the Agency's determination that the HPG

program is Class I action under the Agency's environmental processes.

List of Subjects

7 CFR Part 1940

Endangered and threatened wildlife, Environmental protection, Floodplains, Natural wild and scenic river system, Natural resources, Recreation, Water supply.

7 CFR Part 1944

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

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

1. The authority citation for Part 1940 continues to read as follows and all other authority citations contained in Part 1940 are hereby removed:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480(j); 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Environmental Program

2. Section 1940.311 is amended by removing "and" from the end of paragraph (a)(1), by changing the period at the end of paragraph (a)(2) to a semicolon, by adding "and" at the end of paragraph (a)(2), and by adding paragraph (a)(3) to read as follows:

§ 1940.311 Environmental assessments for Class I actions.

(a) * * *

(3) Financial assistance for a Housing Preservation Grant.

3. Section 1940.319 is amended by revising paragraph (e) to read as follows:

§ 1940.319 Completing environmental assessments for Class I actions.

(e) An important element of this assessment is to determine if the action affects an environmental resource which is the subject of a special Federal consultation or coordination requirement. Such resources are listed in the assessment format, Form FmHA 1940-21, and include wetlands, floodplains, and historic properties, for example. If one of the listed resources is to be affected, the reviewer must demonstrate the required compliance by accomplishing the review and coordination requirements for that resource. Documentation of the steps taken and coordination achieved shall

be attached. If more than one listed resource is to be affected, this shall be viewed as the action having more than minimal impacts and the environmental assessment format for a Class II action shall be initiated, except if the action under review is an application for a Housing Preservation Grant.

PART 1944—HOUSING

4. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

5. Subpart N is added to read as follows:

PART 1944—HOUSING

Subpart N—Housing Preservation Grants

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

- Sec.
- 1944.689 [Reserved]
- 1944.690 Exception authority.
- 1944.691-1944.699 [Reserved]
- 1944.700 OMB Control Number
- Exhibit A of Subpart N—Housing Preservation Grant Agreement
- Exhibit B of Subpart N—Amendment to Housing Preservation Grant Agreement
- Exhibit C of Subpart N—[Reserved]
- Exhibit D of Subpart N—Project Selection Criteria—Outline Rating Form
- Exhibit E of Subpart N—Guide for Quarterly Performance Report

Subpart N—Housing Preservation Grants

§ 1944.651 General.

(a) This subpart sets forth the policies and procedures for making grants under section 533 of the Housing Act of 1949, 42 U.S.C. 1490(m), to provide funds to eligible applicants to conduct housing preservation programs benefiting very low- and low-income rural residents. Program funds cover part or all of the cost of providing assistance to rural housing homeowners for loans, grants, interest reduction payments or other assistance that will reduce the cost of repair and rehabilitation. Such assistance will be used by the homeowner to remove or correct health or safety, hazards of their home to meet applicable development standards or make needed repairs to improve the general living conditions of the resident(s), including improved accessibility by handicapped persons.

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

§ 1944.652 Policy.

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

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

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

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

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

§ 1944.653 Objective.

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

§§ 1944.654-1944.655 [Reserved]

§ 1944.656 Definitions.

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

(a) *Adjusted annual income.* As defined under § 1944.2(k) of Subpart A of Part 1944 of this chapter.

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

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

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

(e) *Housing preservation.* Repair and rehabilitation activities that contribute to the health, safety and well-being of the occupant and contribute to the structural integrity or long term preservation of the unit. As a result of these activities, the overall condition of the house must be raised to meet FmHA Thermal Standards and applicable development standards for existing housing recognized by FmHA in Subpart A of Part 1924 of this chapter or standards contained in any of the voluntary national model codes acceptable upon review by FmHA.

Properties included on or eligible for inclusion on the National Register of Historic Places are subject to the standards and conditions of § 1944.673 of this subpart.

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

(g) *Organization.*

(1) A State, commonwealth or trust territory or other political subdivision, or public nonprofit corporation authorized to receive and administer HPG funds;

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

(3) A private nonprofit corporation that is owned and controlled by private persons or interests and is organized and operated by private persons or interests for purposes other than making gains or profits for the corporation, is legally precluded from distributing any gains or profits to its members, and is authorized to undertake housing development activities; or

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

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

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

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

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

Exhibit C of Subpart A of Part 1944 of this chapter.

§ 1944.657 [Reserved]

§ 1944.658 Applicant eligibility.

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

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

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

(c) Legally obligate itself to administer HPG funds, provide an adequate accounting of the expenditure of such funds in compliance with the terms of this regulation and the grant agreement, OMB Circulars A-102 (Uniform Requirements for Grants to State and Local Governments), A-87 (Cost Principles for State and Local Governments), A-110 (Grants and Agreements with Institutions of Higher Education, Hospitals, and A-122 (Cost Principles for Nonprofit Organizations other Nonprofit Organizations, Uniform Administrative Requirements) as appropriate which are available in any FmHA office, and comply with the grant agreement and FmHA regulations; and

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

§ 1944.659 [Reserved]

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

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

(b) FmHA has designated the District Office as the point of initial contact for

all matters relating to the HPG program and as the office generally responsible for the administration of HPG projects. However, the State Director may, based on total program size or complexity of a particular applicant, elect to process applications and service the program at the State Office. "Administrative Instructions for FmHA Field Offices Regarding Their Responsibilities in the Administration of Housing Preservation Grant Program" (available in any FmHA Office), provides guidance to FmHA staff on the HPG program.

§ 1944.661 Homeowner eligibility for HPG assistance.

The homeowners assisted by HPG must have income that meets the low- or very-low-income definition, be the owner of a single family dwelling at least one year prior to the time of assistance, and be the intended occupant of the dwelling subsequent to the time of assistance. The dwelling must be located in a rural area and be in need of housing preservation assistance. Determination of income will be made in accordance with § 1944.8 of Subpart A of Part 1944 of this Chapter. Evidence of ownership may be a photostatic copy of the instrument evidencing ownership. Methods for assuring the intention of the homeowner to continue to occupy the unit after assistance will be established by the grantee. Each homeowner is required to submit evidence of income and ownership for retention in the grantee's files. Grantees may use certifications or require additional information from the homeowner and should seek advice from their attorney.

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

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

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

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

(iii) In the case of a loan, and to the extent possible, the co-owner(s) should also sign the security instrument.

(3) A leasehold interest in the property to be repaired. When the potential HPG recipient's "ownership" interest in the property is based on a leasehold interest, the lease must be in writing and a copy must be included in the grantee's file. The unexpired portion of the lease must not be less than five

years and must permit the recipient to make modifications to the structure without increasing the recipient's lease cost.

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

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

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

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

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

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

§§ 1944.662-1944.663 [Reserved]

§ 1944.664 Housing preservation assistance.

(a) Grantees under HPG are responsible for providing loans, grants or other comparable assistance to homeowners for housing preservation as described in § 1944.656(e) of this subpart.

(b) Authorized housing preservation assistance includes but is not limited to cost of labor and materials for:

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

(2) Energy conservation measures such as:

- (i) Insulation; and
- (ii) Combination screen-storm windows and doors.

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

(4) Electrical wiring.

(5) Repair of, or provision for, structural supports and foundations.

(6) Repair or replacement of the roof.

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

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

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

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

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

(ii) the manufactured home or mobile home is on a permanent foundation or will be put on a permanent foundation with HPG funds. Advice on the requirements for a permanent foundation is available from FmHA.

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

(c) HPG funds may be used for payment of incidental expenses directly related to accomplishing authorized activities such as fees for connection of utilities (water, sewer, gas, electric), credit reports, surveys, title clearance, loan closing, inspections, and architectural and other technical services. All fees will be in accordance with local prevailing rates and so documented.

(d) HPG funds may be used to make improvements that do not contribute to the health, safety and well being of the occupant or do not materially contribute to the structural integrity or long term preservation of the unit. The percentage of funds to be used for such purposes must not exceed 25 percent of the total funding for the unit, and such work must be combined with improvements listed as eligible under paragraph (b) of this section. These improvements might include, but are not limited to the following:

- (1) Painting;
- (2) Paneling;
- (3) Carpeting;
- (4) Improving clothes closets or shelving;
- (5) Improving kitchen cabinets;
- (6) Air conditioning; or
- (7) Landscape plantings.

(e) Under the following conditions, HPG funds may be used to reimburse the grantee for authorized housing preservation activities performed by employees of the grantee where the grantee acts as a construction contractor and furnishes construction services:

(1) The grantee must demonstrate that such work performed by the grantee results in cost savings in terms of time and labor over cost for such work prevailing in the area;

(2) The grantee has established a process for third party review of performance by a local government, building inspector or other independent party;

(3) The grantee has established or makes available a process that provides for consumer protection to the homeowner assisted; and

(4) The grantee's accounting system provides a clear delineation between administrative costs and construction contractor (nonadministrative) costs.

(f) HPG funds may not be used to:

(1) Assist in the construction or completion of a new dwelling.

(2) Refinance any debt or obligation of the homeowner other than obligations incurred for eligible items covered by this section entered into after date of agreement with HPG grantee.

(3) Repair or rehabilitate any property located in the Coastal Barrier Resources System as designated by the Coastal Barrier Resource Act.

§ 1944.665 Supervision and inspection of rehabilitation and repair work.

Grantees are responsible for supervising all rehabilitation and repair work financed with HPG assistance. All HPG work must be inspected by a disinterested third party, such as local building and code enforcement officials. If there are no such officials serving the area where HPG activities will be undertaken, or if the grantee would also normally make such inspections, the grantee must use qualified contract or fee inspectors. A grantee may not inspect its own work.

§ 1944.666 Administrative activities and policies.

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

(a) Administrative expenses may include:

(1) Payment of reasonable salaries or contracts for professional, technical, and clerical staff actively assisting in the delivery of the HPG project.

(2) Payment of necessary and reasonable office expenses such as office rental, supplies, utilities, telephone services, and equipment. (Any item of nonexpendable personal property having a unit value of \$1,000 or more, acquired with HPG funds, will be

specifically identified to FmHA in writing.)

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

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

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

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

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

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

(2) Substitution of any financial support previously provided or currently available from any other source.

(3) Reimbursing personnel to perform construction related to housing preservation assistance. (Nonadministrative funds may be used if construction is for housing preservation assistance under the provisions of § 1944.664(e) of this subpart.)

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

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

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

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

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

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

(d) The grantee may not charge fees or accept any compensation or gratuities from HPG recipients for the grantee's

technical or administrative services under this program. Where the grantee performs as a construction contractor, the grantee may be paid such compensation directly related to construction services provided and limited to authorized housing preservation activities.

§ 1944.667 [Reserved]

§ 1944.668 Term of grant.

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

§ 1944.669 [Reserved]

§ 1944.670 Project income.

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

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

§ 1944.671 Equal opportunity requirements.

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

§ 1944.672 Environmental and administrative requirements.

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

(a) Subpart G of Part 1940 of this chapter regarding environmental requirements:

(1) The approval of an HPG grant for the rehabilitation of single family dwellings shall be a Class I action. As part of their preapplication materials, applicants shall submit Form FmHA 1940-20, "Request for Environmental Information," for the geographical area(s) proposed to be served by the program. Guidance on completing the form for an HPG preapplication will be

available from the FmHA Office servicing the program.

(2) The use of HPG funds to rehabilitate specific single family dwellings are generally exempt from an FmHA environmental review. However, if such units are located in a floodplain or wetland or the proposed work is not concurred in by the Council on Historic Preservation under the requirements of § 1944.673 of this subpart, an FmHA environmental review is required. Applicants must include in their preapplication a process for identifying units that may receive housing preservation assistance that will require an environmental assessment.

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

(b) The policies, guidelines and requirements of OMB Circulars (Nos. A-102 and A-87 for public bodies and Nos. A-110 and A-122 for nonprofits) apply to the acceptance and use of HPG funds.

§ 1944.673 Historic preservation requirements and procedures.

(a) FmHA has entered into a Programmatic Memorandum of Agreement (PMOA) with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation in order to implement the specific requirements regarding historic preservation contained in section 533(i) of the enabling legislation. The PMOA with attachments can be found in FmHA Instruction 2000-FF (available in any FmHA office).

(b) Accordingly, each applicant for an HPG grant will provide, as part of its preapplication documentation submitted to FmHA, a description of its proposed process for assisting very low- and low-income families owning historic properties needing rehabilitation or repair. "Historic properties" are defined as properties that are included or eligible for inclusion on the National Register of Historic Places. Each HPG proposal shall:

(1) Be developed in consultation with the State Historic Preservation Officer (SHPO) for the State in which the applicant proposes to undertake the HPG program;

(2) Take into account the national historic preservation objectives set forth at 16 U.S.C. 470-1(1), (4), and (5) (Attachment 1 of the PMOA) and specifically be designed to encourage

the rehabilitation of historic properties in a manner that realistically meets the needs of very low- and low-income homeowners while preserving the historic and architectural character of such buildings;

(3) Establish a mechanism for determining whether buildings proposed for rehabilitation are "historic properties" and whether rehabilitation may affect historic properties. Such mechanisms must be consistent with the guidance contained in Attachment 2 of the PMOA.

(4) Establish mechanisms, as feasible, for coordinating with other public and private organizations and programs that provide assistance in the rehabilitation and preservation of historic properties;

(5) Establish a system to ensure that the rehabilitation of historic properties is reasonably consistent with the recommended approaches in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (G.P.O. 1983 0-416-688 or available from any FmHA office processing an HPG preapplication), except as provided in § 1944.673(b)(6), and that the SHPO is afforded the opportunity to comment on each such rehabilitation; and

(6) Establish a system by which the applicant will furnish all necessary information and initiate the consultation steps set forth in 36 CFR Part 800, Protection of Historic and Cultural Properties (available from any FmHA office processing an HPG preapplication), to afford the Advisory Council on Historic Preservation an opportunity to comment on any rehabilitation that the applicant, in consultation with the SHPO, determines cannot reasonably meet the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* or would adversely affect historic properties (see Attachment 3 of the PMOA).

(c) For the purposes of § 1944.673(b)(6), the Advisory Council on Historic Preservation will consider grantees as though they were Federal agencies in the process prescribed in the Council's regulations implementing section 106 of the National Historic Preservation Act [36 CFR Part 800, Protection of Historic and Cultural Properties], except that, should the Council be unable to concur in an applicant's proposal or reach agreement with the grantee on measures to avoid or mitigate effects on an historic property, the Council will notify the SHPO, the applicant or grantee and FmHA that the entity cannot be treated as though it were a Federal agency with

respect to the specific property under consideration.

(d) The grantee will also notify the FmHA office servicing its program of notification from the Council immediately. Upon receipt of such notification, FmHA will assume responsibility for completing compliance with 36 CFR Part 800, using the procedures for an environmental assessment contained in Subpart G of Part 1940 of this Chapter. The grantee will assist FmHA in preparing this assessment and may be required, if further information is needed, to prepare and submit an FmHA Form 1940-20, "Request for Environmental Information," for the property, with the grantee being the "applicant." FmHA will work with the grantee to develop alternative actions as appropriate.

(e) Such assumption of responsibility by FmHA on a particular property shall not preclude the grantee from carrying out the requirements of 36 CFR Part 800 on other properties as though it were a Federal agency, but no work may be commenced on any unit in controversy until and unless so advised by FmHA.

(f) If FmHA is required to make an environmental assessment, the results of the assessment will be made part of the recipient's file. The grantee must also include in each recipient's file:

(1) Documentation on how the process for historic preservation review under this section has been complied with, including all relevant reviews and correspondence; and

(2) Determination whether the unit is located in a 100-year floodplain or a wetland.

§ 1944.674 Public participation and consultation with State and local governments.

(a) In preparing its Statement of Activity, the applicant is responsible for consulting with leaders from the county, parish and/or township governments of the area where HPG activities will take place for the purpose of assuring that the proposed HPG program is beneficial and does not duplicate current activities. Indian nonprofit organization applicants should obtain the written concurrence of the Tribal governing body in lieu of consulting with the county governments when the program is operated only on tribal land.

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

(c) The HPG program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under Subpart J of part 1940 of this chapter, "Intergovernmental Review of Farmers Home Administration Programs and Activities," prospective applicants for HPG grants must submit their Statement of Activities to the State Single Point of Contact prior to submitting their preapplication to FmHA. Comments and recommendations made through the intergovernmental review process are for the purpose of assuring consideration of State and local government views. The name of the Point of Contact is available from the FmHA State Office.

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

The allocation and distribution of HPG funds is found in § 1940.578 of Subpart L of Part 1940 of this Chapter, "Methodology and Formulas for Allocation of Loan and Grant Program Funds."

§ 1944.676 Preapplication procedures.

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

(b) All preapplications shall be accompanied by the following information which FmHA will use to determine the applicant's eligibility to undertake the HPG program and to evaluate the preapplication under the project selection criteria of § 1944.679 of this subpart.

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

(i) A complete discussion of the type of and conditions for financial assistance for housing preservation;

(ii) The process for selecting recipients for HPG assistance, determining housing preservation needs of the unit, identifying potential environmental effects (per § 1944.672 of this subpart), performing the necessary work, and monitoring/inspecting work performed;

(iii) The development standard(s) the applicant will use for the housing preservation work, and, if not the FmHA development standards for existing housing, evidence of its acceptance by the jurisdiction where the grant will be implemented.

(iv) The time schedule for completing the program;

(v) The staffing required to complete the program;

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

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

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

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

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

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

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

(xiii) The applicant's plan for disposition of any security instruments held by them as a result of its HPG activities in the event of its loss of legal status; and

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

(2) Complete information about the applicant's experience and capacity to carry out the objectives of the proposed HPG program;

(3) Evidence of the applicant's legal existence, including, in the case of a private nonprofit organization, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence one year or more; the names and addresses of the applicant's members, directors,

and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, the names, addresses, and principal purpose of the other organizations and, if a consortium, documentation showing compliance with § 1944.656(g)(4) of this subpart.

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

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

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

(7) Any other information necessary to specifically address the selection criteria in § 1944.679 of this subpart.

(c) The applicant must submit a description of its program for identifying and rehabilitating any properties that are listed on or eligible for listing on the National Register or Historic Places as well as evidence of concurrence by the SHPO in the program in accordance with § 1944.673 of this subpart, or, in the event of nonconcurrence, the SHPO's comments together with evidence that the applicant has sought the advice of the Advisory Council on Historic Preservation as to how the disagreement might be resolved and any advice provided by the Council.

(d) The applicant must submit written statements and related correspondence reflecting compliance with § 1944.674 (a) and (c) of this subpart regarding consultation with local government leaders in the preparation of its program and then consultation with local and

state government pursuant to the provisions of Executive Order 12372.

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

(f) The applicant must submit an original and one copy of Form FmHA 1940-20, as well as a description of the applicant's process for determining whether an individual property requires an environment assessment per § 1944.672 of this subpart.

(g) The applicant must submit an original and one copy of Form FmHA 400-1, "Equal Opportunity Agreement," and Form FmHA 400-4, "Assurance Agreement."

§ 1944.677 [Reserved]

§ 1944.678 Preapplication submission deadline.

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

§ 1944.679 Project selection criteria.

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

(1) Provide a financially feasible program of housing preservation assistance as defined in § 1944.656(e) of this subpart;

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

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

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

(b) For applicants meeting the requirements listed in paragraph (a) of this section, FmHA will use the weighted criteria in this paragraph in the selection of grant recipients. Each preapplication and its accompanying statement of activities will be evaluated and, based solely on the information contained in the preapplication, the applicant's proposal will be numerically rated on each criteria within the range provided. The highest ranking applicant(s) will be selected, in accordance with § 1944.680 of this subpart and the resources available to the State. For convenience, Exhibit D,

"Project Selection Criteria—Outline Rating Form, may be used for the rating.

(1) Points are awarded based on the percentage of very low-income homeowners or families the applicant proposes to assist, using the following scale:

(i) More than 80%: 20 points.

(ii) 61% to 80%: 15 points.

(iii) 41% to 60%: 10 points.

(iv) 20% to 40%: 5 points.

(v) Less than 20%: 0 points.

(2) The applicant's proposal may be expected to result in the following percentage of HPG fund use to total cost of unit preservation. This percentage reflects maximum rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, or other specified approaches. Points are awarded based on the following percentage of HPG funds to total funds:

(i) 50% or less: 20 points.

(ii) 51% to 65%: 15 points.

(iii) 66% to 80%: 10 points.

(iv) 81% to 95%: 5 points.

(v) 96% to 100%: 0 points.

(3) The applicant has demonstrated its administrative capacity in assisting very low- and low-income families obtain adequate housing based on the following:

(i) The organization or a member of its staff has two or more years experience successfully managing and operating a rehabilitation or weatherization type program: 10 points.

(ii) The organization or a member of its staff has two or more years experience successfully managing and operating a program assisting very low- and low-income families obtain housing assistance: 10 points.

(iii) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal: 10 points.

(4) The proposed program will be undertaken entirely in rural areas outside Metropolitan Statistical Areas (MSAs) identified by FmHA as having populations below 10,000 or in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population): 10 points.

(5) The program will use less than 20 percent of HPG funds for administration: 5 points.

(6) The proposed program contains a component for alleviating overcrowding: 5 points.

(7) The applicant is an existing grantee and meets the conditions under § 1944.686 of this subpart for additional points: 10 points.

§ 1944.680 Limitation on grantee selection.

After all preapplications have been reviewed under the selection criteria and if more than one preapplication has met the criteria of § 1944.679(a) of this subpart, the State Director may not approve more than 50 percent of the State's allocation to a single applicant.

§ 1944.681 Application submission.

(a) Applicants selected by FmHA will be advised to submit a full application in an original and two copies of Form AD-623, "Application for Federal Assistance (Nonconstruction Programs)," and to include any condition or amendments that must be incorporated into the Statement of Activities prior to submitting a full application. Instructions on submission and timing will be provided by FmHA.

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

§ 1944.682 Grant approval and requesting HPG funds.

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

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

under Subpart B of Part 1900 of this chapter.

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

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

§ 1944.683 Reporting requirements.

(a) SF-269, "Financial Status Report," is required of all grantees on a quarterly basis. Grantees shall submit an original and two copies of the report to the designated FmHA servicing office. Reports will be submitted no later than February 15, May 15, August 15 and November 15 while the grant agreement is in effect.

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

(1) Use of HPG funds for administration and housing preservation activities.

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

(i) Name, address, income, and size of each homeowner family assisted;

(ii) Total cost of unit's repair/rehabilitation, major repairs made, amount financed by HPG, and amount financed from other sources;

(iii) Type of assistance provided (interest subsidy, loan, grant, etc.); and

(iv) Results of implementing the environmental process contained in § 1944.672 of this subpart and the

historic preservation process contained in § 1944.673 of this subpart.

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

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

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

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

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

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

(c) The grantee should be prepared to meet with the FmHA office servicing the project to discuss its quarterly report shortly after submission.

(d) If the reports are not submitted in a timely manner or if the reports indicate that the grantee has made unsatisfactory progress or the grantee is not meeting its established objectives, the State Director will recommend appropriate action to resolve the indicated problem(s). If appropriate corrective action is not taken by the grantee, the State Director has the discretion to not authorize further advances by suspending the project in accordance with § 1944.688 of this subpart and the Grant Agreement.

§ 1944.684 Extending grant agreements and modifying statements of activities.

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

(b) A grantee may request an extension of the Grant Agreement prior to the end of the project term specified in the Grant Agreement if the grantee anticipates that there will be grant funds remaining and the grantee has demonstrated its ability to conduct its program in a manner satisfactory to

FmHA. The State Director may approve an extension when:

(1) The grantee is likely to complete or exceed the goals outlined in the approved Statement of Activities, and

(2) The FmHA office responsible for servicing the grant recommends continuation of the grant until the grantee has expended all of the remaining grant funds.

(c) Modifications of the Statement of Activities, such as revising the processes the grantee follows in operating the HPG program, may be approved by the State Director when the modifications are for eligible purposes per §§ 1944.664 and 1944.666 of this subpart, meet any applicable review and process requirements of this subpart, and the program will continue to serve the geographic area originally approved. The grantee will submit its proposed revisions together with the necessary supporting information to FmHA prior to modifying its operation from the approved Statement of Activities.

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

§ 1944.685 [Reserved]

§ 1944.686 Additional grants.

An additional HPG grant may be made to a grantee when it has achieved or nearly achieved the goals established for the previous grant. The grantee must file a new application for HPG funds that will be processed similar to an initial application and compared under the project selection criteria to others submitted at that time. Ten additional points may be given to an existing grantee where there is a continuing need for the program in the area currently being served by the existing grant, the program has local public and community support, and the grantee has fully complied with the HPG requirements contained herein.

§ 1944.687 [Reserved]

§ 1944.688 Grant evaluation, closeout, suspension and termination.

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

(b) The grant can be suspended or terminated before the grant ending date for the causes specified in the Grant

Agreement. No further grant funds will be advanced when grant suspension or termination procedures have been initiated in accordance with the Grant Agreement. Grantees may be reimbursed for eligible costs incurred prior to the effective date of the suspension or termination. Grantees are prohibited from incurring additional obligations of funds after notification, pending corrective action by the grantee. FmHA may allow necessary and proper costs that the grantee could not reasonably avoid during the period of suspension provided they are for eligible HPG purposes. In the event of termination, FmHA may allow necessary and reasonable costs for an audit.

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

(d) Within ninety (90) calendar days after the grant ending date, the grantee will complete the closeout procedures as specified in the Grant Agreement.

(e) The grantee will complete a final SF-269 and a final performance report upon termination or expiration of the Grant Agreement. The final performance report will serve as the last quarterly report.

(f) The grantee will have an audit performed upon termination or completion of the project in accordance with OMB Circulars Nos. A-102 or A-110, as applicable. As part of its final report, the grantee will address and resolve all audit findings.

§ 1944.689 [Reserved]

§ 1944.690 Exception authority.

The Administrator of FmHA may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, or adversely affect the accomplishment of the purposes of the HPG program, or result in undue hardship by applying the requirement. The Administrator may exercise this exception authority at the request of the State Director. The request must be supported by information demonstrating the adverse impact, citing the particular requirement involved, recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated.

§§ 1944.691-1944.699 [Reserved]

§ 1944.700 OMB Control Number.

The collection of information requirements in this regulation have

been approved by the Office of Management and Budget and assigned OMB Control Number 0575-0115.

Exhibit A of Subpart N—Housing Preservation Grant Agreement

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

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

Part A—Definitions

1. "Beginning date" means the date this agreement is executed by FmHA and costs can be incurred.
2. "Ending date" means the date when all work under this agreement is scheduled to be completed. It is also the latest date grant funds will be provided under this agreement, without an approved extension.
3. "Disallowed costs" are those charges to a grant which the FmHA determines cannot be authorized in accordance with applicable Federal cost principles contained in Treasury Circular 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments," OMB Circular A-87, "Cost Principles for State and Local Governments," OMB Circular A-122, "Cost Principles for Nonprofit Organizations," and other conditions contained in this Agreement and OMB Circular A-102 "Uniform Requirements for Grants to State and Local

Governments," and OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, Uniform Administrative Requirements," as appropriate.

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

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

Part B—Terms of agreement

FmHA and grantee agree:

1. All grant activities shall be limited to those authorized in Subpart N of 7 CFR Part 1944.

2. This Agreement shall be effective when executed by both parties.

3. The HPG activities approved by FmHA shall commence and be completed by the date indicated above, unless earlier terminated under paragraph B 18 below or extended.

4. Grantee shall carry out the HPG activities and processes as described in the approved Statement of Activities which is made a part of this Agreement. Grantee will be bound by the activities and processes set forth in the Statement of Activities and the further conditions set forth in this Agreement. If the Statement of Activities is inconsistent with the Agreement, the latter will govern. A change of any activities and processes must be in writing and must be signed by the FmHA State Director or his or her delegated representative.

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

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

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

- (a) To pay obligations incurred before the effective date of this Agreement.
- (b) To pay obligations incurred after the grant termination or ending date.
- (c) Entertainment purposes.
- (d) To pay for capital assets, the purchase of real estate or vehicles,

improvement or renovation of grantee's office space, or repair or maintenance of privately owned vehicles.

(e) Any other purpose specified in §§ 1944.664(f) and § 1944.666(b) of this subpart.

(f) Administrative expenses exceeding 20% HPG grant funds.

8. Grant funds shall not be used to substitute for any financial support previously provided and currently available or assured from any other source.

9. Disbursal of grants will be governed as follows:

(a) In accordance with Treasury Circular 1075 (fourth revision) Part 205, Chapter II of title 31 of the Code of Federal Regulations, grant funds will be provided by FmHA as cash advances on an as needed basis not to exceed one advance every 30 days. The advance will be made by direct Treasury check to the grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated to OMB Circular A-102 (42 FR 45828, September 12, 1977) for State and local governments and OMB Circular A-110 (41 FR 32016, July 30, 1976) for nonprofit organizations.

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

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

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

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

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

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

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

(b) Quarterly (not later than February 15, May 15, August 15, and November 15 of each year), an original and 2 copies of SF-269, "Financial Status Report," and a quarterly performance report in accordance with § 1944.683 of this subpart.

(c) Within ninety (90) days after the termination or expiration of the Grant Agreement, an original and 2 copies of SF-269, and a final performance report which will include a summary of the project's accomplishments, problems, and planned future activities of the grantee for HPG. Final reports may serve as the last quarterly report.

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

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

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

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

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

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

16. In all hiring or employment made possible by or resulting from this grant, the grantee: (a) Will not discriminate

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

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

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

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

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

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

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

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

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

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

(ii) The grantee will furnish to FmHA within 90 calendar days after the date of completion of the grant an SF-269 and all financial, performance, and other reports required as a condition of the grant, including an audit report.

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

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

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

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

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

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

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

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

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

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

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

(ii) *Termination for convenience.*

FmHA or the grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in case of partial termination, the portion to be terminated.

(d) FmHA shall notify the grantee in writing of the determination and the

reasons for and the effective date of the suspension or termination. Except for termination convenience, grantees have the opportunity to appeal a suspension or termination under FmHA's appeal procedure, Subpart B of Part 1900 of this chapter.

19. Upon any default under its representatives or agreements set forth in this instrument, the grantee, at the option and demand of FmHA, will, to the extent legally permissible, repay to FmHA forthwith the grant funds received with interest at the rate of five per centum per annum from the date of the default. The provisions of this Grant Agreement may be enforced by FmHA, at its option and without regard to prior waivers by it or previous defaults of the grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State Courts, as may be deemed necessary by FmHA to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

20. Extension of this Grant Agreement and/or modifications of the Statement of Activities may be approved by FmHA provided, in its opinion, the extension and/or modification is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the Statement of Activities during the period of the extension and/or modifications as specified in § 1944.684 of this subpart.

Part C—Grantee agrees

1. To comply with property management standards for expendable and nonexpendable personal property established by Attachment N of OMB Circular A-102 or Attachment N of OMB Circular A-110 for State and local governments or nonprofit organizations respectively. "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights. "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. A grantee may use its own definitions of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. "Expendable personal property" refers to all tangible personal property other than nonexpendable personal property. When nonexpendable tangible personal property is acquired by a

grantee with project funds, title shall not be taken by the Federal Government but shall vest in the grantee subject to the following conditions:

(a) Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of \$1,000 or more, FmHA may reserve the right to transfer title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(i) The property shall be appropriately identified in the grant or otherwise made known to the grantee in writing.

(ii) FmHA shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If FmHA fails to issue disposition instructions within the 120 calendar day period, the grantee shall apply the standards of paragraph 1(c) below.

(iii) When FmHA exercises its right to take title, the personal property shall be subject to the provisions for federally owned nonexpendable property discussed in paragraph 1(a)(iv) below.

(iv) When title is transferred either to the Federal Government or to a third party and the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefitting Federal agency with an amount which is computed by applying the percentage of the grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(b) Use of other tangible nonexpendable property for which the grantee has title.

(i) The grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the grantee shall use the property in connection with its other federally sponsored activities, in the following order of priority:

(A) Activities sponsored by FmHA.

(B) Activities sponsored by other Federal agencies.

(ii) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First

preference for such other use shall be given to other projects or programs sponsored by FmHA; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by FmHA. User charges should be considered if appropriate.

(c) Disposition of other nonexpendable property. When the grantee no longer needs the property, the property may be used for other activities in accordance with the following standards:

(i) Nonexpendable property with a unit acquisition cost of less than \$1,000. The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(ii) Nonexpendable personal property with a unit acquisition cost of \$1,000 or more. The grantee may retain the property for other use provided that compensation is made to FmHA or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from the original Grantor agency. FmHA shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR) to the General Services Administration by FmHA to determine whether a requirement for the property exists in other Federal agencies. FmHA shall issue instructions to the grantee no later than 120 calendar days after the grantee request and the following procedures shall govern:

(A) If so instructed or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse FmHA an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the grantee shall be permitted to deduct and retain from the Federal shares \$100 or ten percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(B) If the grantee is instructed to dispose of the property other than as

described in paragraph 1(a)(iv) above, the grantee shall be reimbursed by FmHA for such costs incurred in its disposition.

(C) The grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

- (a) A description of the property.
- (b) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.
- (c) Sources of the property including grant or other agreement number.
- (d) Whether title vests in the grantee or the Federal Government.
- (e) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.
- (f) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government).
- (g) Location, use, and condition of the property and the date the information was reported.
- (h) Unit acquisition cost.
- (i) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value when a grantee compensates the Federal agency for its share.

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the grantee shall promptly notify FmHA.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) When the grantee is authorized or required to sell the property, proper sales procedures shall be established

which will provide for competition to the extent practicable and result in the highest possible return.

(7) Expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding \$1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

2. To provide a financial management system which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effecting control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are solely for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after the submission of the final Project Performance report pursuant to Part B (10)(c) of this Agreement except in the following situations:

(a) If any litigation, claim, audit, or investigation is commenced before the expiration of the three year period, the records shall be retained until all litigations, claims, audit or investigation findings involving the records have been resolved.

(b) Records for nonexpendable property acquired by FmHA, the three year retention requirement is not applicable.

(c) When records are transferred to or maintained by FmHA, the three year retention requirement is not applicable.

Microfilm copies may be substituted in lieu of original records. FmHA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to

any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

4. To provide information as requested by FmHA concerning the grantee's actions in soliciting citizen participation in the application process, including published notice of public meetings, actual public meetings held, and content of written comments received.

5. Not to encumber, transfer, or dispose of the property or any part thereof, furnished by FmHA or acquired wholly or in part with HPG funds without the written consent of FmHA except as provided in Part C 1 of this Agreement.

6. To provide FmHA with such periodic reports of grantee operations as may be required by authorized representatives of FmHA.

7. To execute Form FmHA 400-1, and to execute any other agreements required by FmHA to implement the civil rights requirements.

8. To include in all contracts in excess of \$100,000 a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 1875C-9 as amended.

Violations shall be reported to FmHA and the Regional Office of the Environmental Protection Agency.

9. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom, but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

10. That all nonconfidential information resulting from its activities shall be made available to the general public on an equal basis.

11. That the purpose for which this grant is made may complement, but shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public and private.

12. That the grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

13. That the grantee shall abide by the policies promulgated in OMB Circular A-102, Attachment O, or OMB Circular A-110, Attachment O, as applicable, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

14. That it is understood and agreed that any assistance granted under this Agreement will be administered subject to the limitations of Title V of the Housing Act of 1949 as amended, 42 U.S.C. 1471 et seq., and related regulations, and that all rights granted to FmHA herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the assistance, and project FmHA's financial interest.

15. That it will adopt a Standard of Conduct that provides that, if an employee, officer, or agent of the grantee, or such person's immediate family members conducts business with the grantee, the grantee must not:

(a) Participate in the selection, award, or administration of a contract to such persons for which Federal funds are used;

(b) Knowingly permit the award or administration of the contract to be delivered to such persons or other immediate family members or to any entity (i.e., partnerships, corporation, etc.) in which such persons or their immediate family members have an ownership interest; or

(c) Permit such person to solicit or accept gratuities, favors or anything of monetary value from landlords or developers of rental or ownership housing projects or any other person receiving HPG assistance.

Part D—FmHA agrees

1. That it may assist grantee, within available appropriations, with such technical and management assistance as needed in coordinating the Statement of Activities with local officials, comprehensive plans, and any State or area plans for improving housing for very low- and low-income households in the area in which the project is located.

2. That at its sole discretion, FmHA may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect FmHA's financial interests therein, and (b) consistent with the statutory purposes of the grant and the limitations of the statutory authority

under which it is made and FmHA regulations.

This Agreement is subject to current FmHA regulations and any future regulations not inconsistent with the express terms hereof. Grantee has caused this Agreement to be executed by its duly authorized _____, properly attested to and its corporate seal affixed by its duly authorized _____.

Attest:
Grantee:

By _____
(Title) _____

United States Of America Farmers Home Administration:

By _____
(Title) _____

Date of Execution of Grant Agreement by FmHA: _____

Attached Statement of Activities Is Made Part of This Agreement.

Exhibit B of Subpart N—Amendment to Housing Preservation Grant Agreement

This Amendment between _____ herein called "Grantee," and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "FmHA," hereby amends the Housing Preservation Grant Agreement executed by said parties on _____, 19____, hereinafter called the "Agreement."

Said Agreement is amended by extending the Agreement to _____, 19____, and/or by making the following changes noted in the attachments hereto: (List and identify proposal and any other documents pertinent to the grant which are attached to the Amendment.)

Grantee has caused this Agreement to be executed by its duly authorized _____, properly attested to and its corporate seal affixed by its duly authorized _____.

Attest:
Grantee:

By _____
(Title) _____

United States Of America Farmers Home Administration:

By _____
(Title) _____

Date of Execution of Amendment to Grant Agreement by FmHA: _____

Exhibit C of Subpart N—[Reserved].

Exhibit D of Subpart N—Project Selection Criteria Outline Rating Form

Applicant Name _____
Applicant Address _____
Application received on _____
State _____ District Office _____

Threshold Criteria

Applicant must meet the following:

- 1. Proposes a financially feasible HPG program yes— no—
- 2. Serves an eligible rural area yes— no—
- 3. Is an eligible HPG grantee... yes— no—
- 4. Has met consultation and public comment rules..... yes— no—

If answer to any of the above is "no", application is rejected and applicant so notified.

Selection Criteria:

Select the appropriate rating:

1. Points awarded based on the percentage of very-low income homeowners or families the applicant proposes to assist, using the following scale _____:

- (a) More than 80%: 20 points.
- (b) 61% to 80%: 15 points.
- (c) 41% to 60%: 10 points.
- (d) 20% to 40%: 5 points.
- (e) Less than 20%: 0 points.

2. Points awarded based on the applicant's percentage of use of HPG funds to total cost of unit preservation. This percentage reflects maximum rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, or other specified approaches. Points are based on the following percentage of HPG funds to total funds _____:

- (a) 50% or less: 20 points.
- (b) 51% to 65%: 15 points.
- (c) 66% to 80%: 10 points.
- (d) 81% to 95%: 5 points.
- (e) 96% to 100%: 0 points.

3. The applicant has demonstrated its administrative capacity in assisting very low- and low-income families obtain adequate housing based on the following:

(a) The organization or a member of its staff has two or more years experience successfully managing and operating a rehabilitation or weatherization type program _____:

- Yes—10 points.
- No—0 points.

(b) The organization or a member of its staff has two or more years experience successfully managing and operating a program assisting very low- and low-income families obtain housing assistance _____:

- Yes—10 points.
- No—0 points.

(c) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal _____:

- No findings: 10 points.
- Outstanding findings: 0 points.

4. The proposed program will be undertaken *entirely* in rural areas outside Metropolitan Statistical Areas (MSAs) identified by FmHA as having populations below 10,000 or in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population) _____:

- Non-MSA area below 10,000 pop.: 10 points.
- MSA area below 5,000 pop.: 10 points.
- Neither: 0 points.

5. The program will use less than 20 percent of HPG funds for administration _____:

- Less than 20%: 5 points.
- 20%: 0 points.

6. The proposed program contains a component for alleviating overcrowding _____:

- Has component: 5 points.
- No component: 0 points.

7. The applicant is an existing grantee and meets the conditions of § 1944.686 of this subpart for additional points _____:

- Meets conditions: 10 points.
- Doesn't meet conditions: 0 points.
- Total Points _____:
- Ranking of This Applicant _____

Exhibit E of Subpart N—Guide For Quarterly Performance Report

Grantee name: _____
 Grantee address: _____
 Grant quarter: _____
 Report Period: From: _____ To: _____

Item	Housing preservation activity		Financial assistance		
	Cost of materials/labor	HPG	Other	Total	

IV. Objectives for next period:

Loans.....No. _____ \$ _____
 Grants.....No. _____ \$ _____
 Other subsidy.....No. _____ \$ _____
 Totals.....No. _____ \$ _____

V. Project summary:

	No. homeowners	HPG funds	Other
Assistance objectives of project.....		\$ _____	\$ _____
Assistance to date.....			
Assistance during next period.....			

I. General Information on Use of HPG Funds During Period:

A. Use of Administrative Funds:
 Budgeted Amount.....\$ _____
 Expended Thru Last Quarter.....\$ _____
 Direct Cost:
 Personnel.....\$ _____
 Supplies & Equip.....\$ _____
 Travel.....\$ _____
 Indirect Costs:
 (_____% Rate).....\$ _____
 This Quarter Total.....\$ _____

B. Use of Program Funds:
 Budgeted Amount.....\$ _____
 Expended Thru Last Quarter.....\$ _____
 Loans.....No. _____ \$ _____
 Grants.....No. _____ \$ _____
 Other subsidies (describe briefly).....No. _____ \$ _____
 This Quarter Total.....\$ _____

II. Description of recipients provided assistance during report period: (Attach breakdown for each HPG recipient on separate page including name, address, income, size, race, housing preservation activities, and type of assistance received):

Number of low-income homeowners assisted..... _____
 Number of very low-income homeowners assisted..... _____
 Total number of homeowners assisted..... _____
 Racial composition:
 White..... _____
 Black..... _____
 Hispanic..... _____
 Am. Indian..... _____
 Other..... _____

III. Description of types of housing preservation provided:

	No. homeowners	HPG funds	Other
Average amount of HPG assistance.....			
Per unit provided (program to date) (per unit).....	\$ _____		

VI. Narrative:
A. Significant accomplishments.
B. Problem areas.
C. Proposed changes/assistance needed, etc.
D. Status of implementing environmental and historic preservation requirements. Include number of historic properties assisted.

Dated: April 15, 1986.

Vance L. Clark,

Administrator, Farmers Home
Administration.

[FR Doc. 86-10584 Filed 5-12-86; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

(Airspace Docket No. 85-AAL-7)

Alteration and Establishment of VOR Federal Airways; Alaska

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several airways and also establishes new airways in western Alaska. This action is due to the installation of new navigational aids, and publishing instrument flight rule (IFR) approach procedures. This will enhance instrument flight, flight planning and also improve the flow of traffic.

EFFECTIVE DATE: 0901 UTC, July 3, 1986.

FOR FURTHER INFORMATION CONTACT:

Burton Chandler, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On September 17, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the description of several airways and also establish new airways in western Alaska (50 FR 37683). This action is due to the installation of new navigational aids and publication of IFR approach procedures. This will enhance instrument flight, flight planning and also improve the flow of traffic. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Two comments were received. Both commenters agreed that the proposed changes and additions should contribute greatly to the movement and safety of IFR operations in western Alaska.

One commenter stated that "Victor Airways" should be based solely on

VHF facilities, i.e., VOR, VORTAC, or VOR/DME facilities. The FAA agrees that this would be preferable. However, this cannot always be done consistent with optimum service to the user and keeping air traffic delays to a minimum. In areas without radar coverage, it is to the advantage of the user and air traffic controller to use VOR radials over NDB bearings when possible.

The agency designed the airways to use the VOR's to the maximum extent possible, to facilitate flight plan filing, and to provide an orderly flow for the air traffic controller. The commenter disagreed with V-333, V-350, V-401, and V-477 because they include NDB's in the airways. We have reviewed the proposals and find that it would be more confusing to have the transition routes as suggested and would create more of a workload on the controller. The suggested transition routes do not allow the pilot to proceed to his destination in the most direct manner. The suggestion with reference to V-451, that V-451, be established from Nenana to Tanana to Huslia to Selawik to Kotzebue as alternate routing to/from Fairbanks, is beyond the scope of this proposal. The comment on V-480, that the new VOR being constructed at St. Paul be used rather than the NDB, is not valid. It will be 1988 or 1989 before a VOR is available at St. Paul due to equipment. Except for editorial changes and the withdrawal of V-453 from this action due to technical reasons, this amendment is the same as that proposed in the notice. Section 71.125 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will amend the description of several airways and also establish new airways in western Alaska. This action is due to the installation of new navigational aids and publication of IFR approach procedures. This will enhance instrument flight, flight planning and also improve the flow of traffic.

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

routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.125 [Amended]

2. § 71.125 is amended as follows:

V-319 [Amended]

By removing the words "to Bethel, AK." and substituting the words "Bethel, AK; to Hooper Bay, AK."

V-333 [New]

From Cape Newenham, AK, NDB via Kipnuk, AK; Hooper Bay, AK; Nome, AK; to Shishmaref, AK, NDB.

V-350 [New]

From Dillingham, AK, via Togiak, AK, NDB; to Bethel, AK.

V-401 [New]

From Ambler, AK, NDB via Kotzebue, AK; to Shishmaref, AK, NDB.

V-452 [Amended]

By removing the words "From Nome, AK, via" and substituting the words "From Kukuliak, AK, via Nome, AK;"

V-477 [New]

From Galena, AK, via Huslia, AK; Selawik, AK; to Ambler, AK, NDB.

V-480 [Amended]

By removing the word "From" and substituting "From St. Paul Island, AK, NDB via Kipnuk, AK;"

V-488 [Amended]

By removing the word "From" and substituting "From Hooper Bay, AK, via Unalakleet, AK;"

V-531 [New]

From Fairbanks, AK, via Tanana, AK; Huslia, AK; Selawik, AK; Kotzebue, AK; to Point Hope, AK, NDB.

Issued in Washington, DC, on May 5, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-10647 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ASW-4]

Transition Area; Mountain View, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Mountain View, AR. The intended effect of the amendment is to provide adequate controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to Wilcox Memorial Airport utilizing the new SIAP. This amendment is necessary because the SIAP to Wilcox Memorial Airport has been revised. This amendment will not change the volume of airspace required to accommodate instrument flight rules (IFR) activity, but will reorient the 700-foot transition area extension approximately 60 degrees clockwise.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT:

David J. Souder, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2622.

SUPPLEMENTARY INFORMATION:

History

On February 25, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Mountain View, AR, transition area (51 FR 7953).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the 700-foot transition area to ensure

segregation of aircraft using the new SIAP under IFR and other aircraft operating under visual flight rules (VFR) while arriving to and departing from the Wilcox Memorial Airport, Mountain View, AR.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

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

PART 71—[AMENDED]

Mountain View, AR [Amended]

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

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

2. Section 71.181 is amended as follows:

§ 71.181 [Amended]

That airspace extending upwards from 700 feet above the surface within a 6.5-mile radius of the Wilcox Memorial Airport (latitude 35°51'52" N.; longitude 92°05'31" W.) and within 3 miles each side of the 104-degree bearing of the NDB (latitude 35°52'03" N., longitude 92°04'40" W.) extending from the 6.5-mile radius area to 8.5 miles east of the NDB.

Issued at Fort Worth, TX, on April 30, 1986.

Donald R. Guempel,

Acting Manager, Air Traffic Division
Southwest Region.

[FR Doc. 86-10648 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ANM-4]

Transition Area; Portland, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the transition area at Portland, Oregon, to accommodate a procedure turn on the Localizer DME Runway 20 approach to Portland International Airport, Portland, Oregon.

EFFECTIVE DATE: 0901 UTC, July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-534, Federal Aviation Administration, Docket No. 86-ANM-4, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2534.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 19, 1986, the FAA proposed to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amending the transition area for Portland, Oregon (51 FR 6007).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Regulations amends the Portland, Oregon, transition area. This action is necessary to provide additional controlled airspace to accommodate aircraft conducting a procedure turn on a Localizer DME Runway 20 approach to Portland International Airport. This action will ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual conditions.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Aviation safety, Transition areas.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

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

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

2. By amending § 71.181 as follows:

§ 71.181 [Amended]

Portland, Oregon, Transition Area (Amended)

That airspace extending upward from 700' above the surface bounded on the north by lat. 46°00'00" N, on the east by long. 122°00'00" W; thence via a line to lat. 45°51'00" N, long. 122°00'00" W; to lat. 45°51'00" N, long. 122°05'00" W; bounded on the south by lat. 45°10'00" N, and on the west by long. 123°30'00" W; that airspace extending upward from 1,200' above the surface bounded on the north by a line beginning at a point 3 miles offshore at lat. 46°30'30" N, extending easterly via lat. 46°30'30" N, to long. 121°40'00" W; thence easterly along the south edge of V-204 to lat. 46°30'40" N, long. 120°36'00" W; on the east by V-25, on the south by V-536 to Corvallis, VOR; thence via lat. 44°30'00" N, to a point 3 miles offshore and on the west by a line 3 miles offshore to the point of beginning.

Issued in Seattle, Washington, on May 1, 1986.

David E. Jones,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-10649 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ANM-3]

Alteration of Control Zone, Hoquiam, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the status of the Hoquiam Control Zone from full-time to part-time. The Hoquiam Flight Service Station (FSS) has modified its hours of operation and weather observations are not available from 0500 to 1400. Consequently, the control zone no longer qualifies to be operated on a full-time basis.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT:

Fredric C. McDaniel, Airspace & Procedures Specialist, AMN-536, Federal Aviation Administration, Docket No. 86-ANM-3, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2536.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 19, 1986, the FAA proposed to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amending the status of the Hoquiam Control Zone from full-time to part-time (51 FR 6007).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the status of the Hoquiam Control Zone from full-time to part-time. The Hoquiam FSS has modified its hours of operation and weather observations are not available from 0500 to 1400.

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

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

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

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

2. By amending § 71.171 as follows:

§ 71.171 [Amended]

Hoquiam, Washington, Control Zone [Amended]

By adding the following statement to the present description: "This control zone is effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

Issued in Seattle, Washington, on May 1, 1986.

David E. Jones,

Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 86-10650 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 85-AAL-9]

Establishment of VOR Federal Airway V-308 and Jet Route J-188; Bethel and Sparrevohn, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments establish a new Federal Airway V-308 and Jet Route J-188 between Bethel and Sparrevohn, AK. The additional Federal Airway and Jet Route expedite traffic and reduce sector workload by providing an alternate route for aircraft departing Bethel and climbing eastbound. This alleviates opposite direction climb situations.

EFFECTIVE DATE: 0901 UTC, July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800

Independence Avenue SW.,
Washington, DC 20591; telephone: (202)
426-8686.

SUPPLEMENTARY INFORMATION:

History

On February 24, 1986, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to establish a new Federal Airway V-308 and Jet Route J-188 between Bethel and Sparrevohn, AK (51 FR 6419). The additional Federal Airway and Jet Route expedite traffic and reduce sector workload by providing an alternate route for aircraft departing Bethel and climbing eastbound. This action alleviates opposite direction climb situations. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.125 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations establish new VOR Federal Airway V-308 and Jet Route J-188 between Bethel and Sparrevohn, AK. The new Jet Route and the new VOR Federal Airway expedite traffic and reduce workload by providing additional flexibility for maneuvering traffic in the terminal area.

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

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways and Jet Routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, as follows:

PART 71—[AMENDED]

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

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

§ 71.125 [Amended]

2. Section 71.125 is amended as follows:

V-308 [New]

From Bethel, AK, via INT Bethel 066° and Sparrevohn, AK, 279° radials; to Sparrevohn.

PART 75—[AMENDED]

3. The authority citation for Part 75 continues to read as follows:

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

§ 75.100 [Amended]

4. Section 75.100 is amended as follows:

J-188 [New]

From Bethel, AK, via INT Bethel 066° and Sparrevohn, AK, 279° radials; to Sparrevohn.

Issued in Washington, DC, on May 6, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-10646 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5, 16 and 33

Domestic Exchange-Traded Commodity Options; Revisions to Rules for Trading Non-Agricultural Option Contracts and Termination of Pilot Program Status

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: In late 1981 the Commission published final rules governing a three-year pilot program for exchange-traded commodity options. Option trading began on October 1, 1982 following the designation of the first option contract markets. That three-year pilot program expired on October 1, 1985. The

Commission has examined its experience under the pilot program and has re-evaluated various option rules. The Commission is hereby adopting various amendments to the rules governing option trading, terminating the pilot status of this program, and making permanent the status of such trading.

EFFECTIVE DATE: With the exception of the amendments to Part 16 which shall be effective September 10, 1986, these amendments will become effective upon the expiration of thirty calendar days of continuous session of the Congress after the transmittal of these rules and related materials to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry pursuant to section 4(c) of the Commodity Exchange Act, but not before further notice of the effective date is published in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Paul M. Architzel, Chief Counsel, Division of Economic Analysis, or Kenneth M. Rosenzweig, Associate Director, Division of Trading and Markets, 2033 K Street, NW., Washington, DC 20581, (202) 254-6990 or 254-8955, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

As the culmination of a long history of Commission efforts to provide for the trading of commodity options in a regulated environment, the Commission, on November 3, 1981, published final rules establishing a strictly controlled, three-year pilot program to permit exchange-traded commodity options. 46 FR 54500. This pilot program permitted the re-introduction of option trading in the United States. Previously, exchange trading of options on the domestic agricultural commodities regulated under the Commodity Exchange Act ("Act") were prohibited by Congress in 1936 as a result of excessive price movements and severe disruptions in the futures markets attributed to speculative trading in options.¹ Moreover, prior to this pilot program, in 1978, the Commission, with minor exceptions, had banned all option trading in the previously unregulated commodities in the United States. This ban was the result of significant

¹ Act of June 15, 1936, Ch. 545, Section 5, 49 Stat. 1484. See, e.g., Hearings on H.R. 8829 Before the House Committee on Agriculture, 73rd Cong., 2d Sess. 10 (1934) (statement of J. M. Mehl, Assistant Chief, Grain Futures Administration, United States Department of Agriculture); 80 Cong. Rec. 7853-54 (1936) (remarks of Senator Pope).

difficulties associated with the trading of such commodity options.

In the late 1960's and early 1970's, massive frauds in the off-exchange offer and sale of options on those commodities not regulated under the Act occurred. Those frauds were part of the impetus behind the creation of the Commission. In response, the Congress granted the new Commission broad power over option transactions in the previously unregulated commodities.² Because of continued abuses in the offer and sale of options not traded on domestic boards of trade, the Commission suspended the offer and sale of all commodity options in the United States effective June 1, 1978. 43 FR 16153 (April 17, 1978). The Congress codified that suspension as part of the 1978 amendments to the Act but granted the Commission authority to establish a pilot program to permit the trading of commodity options on exchanges. Pub. L. No. 95-405, section 3, 92 Stat. 867; 7 U.S.C. 6c(c) (1976, Supp. V).

The Commission reasoned that in light of these prior abuses in option trading greater protections for public customers were needed. The Commission believed that these protections could be provided if the trading of options took place on regulated exchanges. Accordingly, the pilot program for exchange-traded options was based:

On the assumption of direct and primary regulatory responsibilities by the contract markets for the participation of their members firms. Indeed, the pilot program places significantly greater self-regulatory duties and responsibilities on boards of trade than is presently the case for futures trading, particularly with respect to the protection of the public from sales practice abuses. . . . It is only by placing these regulatory responsibilities on the exchanges that the Commission believes it can presently ensure that sufficient regulatory resources will be deployed to prevent a recurrence of the abuses which have characterized commodity options in the past.

46 FR at 54502.

The Commission is of the opinion that its pilot program for exchange-traded commodity options has been a success. This is highlighted by the Commission's phased expansion of option trading over the course of the pilot program. In this regard, the initial option rules permitted one option on a commodity futures

contract other than on a domestic agricultural commodity to be traded on each exchange. 46 FR at 54530. Subsequently, the Commission adopted rules also permitting the trading of one option per exchange on a physical commodity. 47 FR 56996 (December 22, 1982). The pilot program was then modified by permitting two options per exchange whether on futures or physicals. 48 FR 41575 (September 16, 1983). On August 24, 1984, the permitted number of options on futures contracts was expanded from two to five options per exchange, although the previous limit on the number of options on a physical commodity was retained. 49 FR 33641. Finally, on November 4, 1985, the Commission expanded the number of options permitted on each exchange from five to eight. 50 FR 48511. In addition, following the repeal by the Congress of the 1936 statutory ban on options involving domestic agricultural commodities, a separate three-year pilot program for the trading of options on those commodity futures contracts was adopted on January 23, 1984. 49 FR 2752. This pilot program provided that each exchange could be designated for two options on domestic agricultural futures contracts. On April 2, 1986, the Commission determined to expand this latter pilot program from two to five commodity options per exchange. 51 FR 11905 (April 8, 1986).

Pursuant to the requirements of Section 4c(c) of the Act, with each major expansion of the program the Commission has justified to the Congress its ability to regulate the trading of exchange-traded commodity options. Major interim evaluations of the pilot option programs were made at the time the non-agricultural option pilot program was expanded from one option on a futures contract and one on a physical contract per exchange to two options of any kind, when the program was expanded from two to five options per exchange, and at the time the pilot program for options on domestic agricultural futures contracts was initiated. In addition, a major evaluation of the Commission's experience with option trading was sent to the Congress at the time that the pilot program for domestic agricultural options was expanded from two to five contracts per exchange.

Overall, The Commission's experience with its pilot option programs has been that few regulatory problems have arisen and that, for the most part, the exchanges have discharged their responsibilities under the programs adequately. Moreover, there were few, if any, customer complaints of the type which formerly had characterized option

trading. Finally, the Commission has noticed no adverse effects on the underlying futures markets resulting from the option programs. An exception to the overall success of the option program on non-agricultural commodities has been the March 1985 default of Volume Investors Corporation, a clearing member of the Comex Clearing Association, as a result of the failure of three of its customers to meet margin calls on their uncovered short option positions in the Comex gold option contract. In response to this problem, the Commission proposed separate capital rules and a guideline concerning option margins.³ 50 FR 3162; 50 FR 31625 (August 5, 1985). The Commission is still considering those proposed rules and the comments received on them and will make an appropriate determination at some future date.

II. The Proposed Rules

As part of its final evaluation of the pilot option program, the Commission proposed several modifications to the existing option rules. 50 FR 35247 (August 30, 1985). The most fundamental change contemplated by the Commission was whether to make the option program permanent. The Commission requested comment on whether, as an alternative to this, the pilot status of the program should be maintained but the permitted number of options expanded. In addition, changes in the existing rules which were proposed included modifications to the current definition of hedging to cover options, deleting the requirement of participation by commercial interests in developing option contracts, deleting an exchange-required definition of deep-out-of-the-money options, raising the underlying futures volume criterion for initial designation, establishing delisting criteria based on the volume in the underlying futures and in the option contracts, modifying reporting requirements and certain disclosure rules, deleting the requirement for exchange conduct of market-wide

³The Commission notes that some of the exchanges commenting on the option rule proposals suggested that the Commission modify its regulations to permit "futures-style" margining of option transactions. The Commission has explored this issue in the past. See, e.g., 49 FR 8937 (March 9, 1984). The Commission is not presently inclined, however, to expend substantial additional resources on any further examination of this subject, at least until a unified proposal, reasonably representative of the interests of the various exchanges and the clearing organizations, futures commission merchants, commercial users of the option markets and other interested persons, is presented to the Commission.

²Commodity Futures Trading Commission Act of 1974, Pub. L. 93-463, Section 402(c), 88 Stat. 1412-13 (codified at 7 U.S.C. 6c(b)). See, e.g., 120 Cong. Rec. S34967 (daily ed. October 10, 1974) (remarks of Senator Talmadge); Hearings on the Review of the Commodity Exchange Act Before the House Committee on Agriculture, 93rd Cong., 1st Sess. 11 (1973) (statement of Representative Smith); H.R. Rep. No. 93-975, 93rd Cong., 2d Sess. 37-39, 48-50 (1974).

surveys, and modifying the requirement to file promotional material, customer complaints, and disciplinary actions with the exchanges.⁴

III. Comments Received

In response to these proposed rules the Commission received twenty-one comments. The commenters included six exchanges, eight futures commission merchants or commodity trading advisors, several foreign exchanges, one industry association, the government of the United Kingdom, and several corporate users of the option markets. In general, all of the commenters agreed that the pilot option program had been a success and should be made permanent.

The commenters agreed that option trading served a useful economic function and provided trading opportunities additional to future trading. Accordingly, the commenters supported the growth of the option program. Moreover, none of the commenters disagreed that certain of the Commission's proposed regulations should be adopted as final. These included the proposal to include options within the meaning of hedging (Commission Rule 1.3(z)), to delete the requirement that commercials participate in contract design (Commission Rule 33.4(a)(5)(ii)), to delete the required exchange definition of "deep-out-of-the-money" options (Commission Rule 33.4(b)(2)), and to delete the requirement that contract markets conduct market-wide surveys (Commission Rule 16.05).

In response to the Commission's request, several commenters also suggested various rule changes. These included proposals that contract terms and conditions be standardized, that the time between expiration of the option and the underlying futures contract be reduced from ten days to one day (Commission Rule 33.4(d)(1)), that the

economic purpose test for option designation be deleted (Commission Rule 33.4(a)(5)(i)), that the requirement for speculative position limits on options be deleted or revised (Commission Rule 1.61), that an exchange be able to trade an option on any underlying futures contract regardless of where that contract is traded (Commission Rule 33.4(a)(3)), and that the ban on foreign traded options be lifted. These issues are discussed in greater detail below.

IV. Final Rules

A. The Pilot Nature of the Program

In light of the favorable experience with the pilot option program, including the apparent substantial use of these markets by commercial enterprises, the Commission requested comment on whether the pilot program should be made permanent and whether the Commission should lift the limitation on the number of options on futures contracts on commodities other than domestic agricultural commodities permitted on each exchange. Currently, Commission Rule 33.5(c) provides that the effective period for designation for commodity options shall not exceed three years from the effective date of designation. In addition, Commission Rule 33.4(a)(6) limits the number of commodity options which may be traded on an exchange.

As noted above, all twenty-one commenters responded favorably to this proposal. They uniformly held the option that the option program had been a success and should be made permanent. Moreover, they agreed that the limitation on the number of options permitted per exchange should be lifted. The Commission concurs. Accordingly, the Commission is amending Rules 33.4(a)(6) and 33.5(c) to delete the three-year limitation on the period of designation and the limitation on the number of options permitted per exchange. Insofar as these provisions also relate to the trading of options on physicals, however, it should be noted that although the three-year period for designation of such options has been lifted, the numeric limit on the number of such options continues. This limitation will be reconsidered after greater experience with the trading of options on physical commodities has been obtained.

B. Definition of Bona Fide Hedging

The Commission proposed that options be included within the definition of hedging under Commission Rule 1.3(z). As noted when the Commission proposed this rule,

At the time that the initial option rules were adopted, the Commission was concerned that the use of options to shift risk might not fit fully with the definition of "hedging" as it applied to futures contracts.

50 FR 35249.

However, the Commission has learned in the course of the pilot program that the application of the term "hedging" to certain risk shifting activities of option traders is appropriate. Evidence of this is found in certain applications by the exchanges of the term "hedging" and the reference to the Commission's definition of hedging in Commission Rule 1.3(z)(1) as part of exchange-set speculative position limits for options. Moreover, uniform use of the term hedging with respect to both options and futures trading would simplify the option rules. The Commission therefore believes that an amendment of Commission Rule 1.3(z)(1) is appropriate. In this connection, Commission Rules 1.46 and 1.61 are also being amended in order to be consistent with the change to Commission Rule 1.3(z)(1).⁵

Although the adoption of this and the related proposed rules as final was supported by all of the commenters, one commenter questioned the Commission's statement "that generally option grantors cannot meet the Commission's definition of hedging and that this proposed amendment is not intended to imply that covering speculative futures . . . with options . . . can be considered hedging. . . ." 50 FR 35249. That commenter maintained that "it is incorrect to say that the use of options on financial futures to hedge a securities portfolio will generally not meet the definition of hedging."

The Commission reiterates, as discussed in the notice of proposed rulemaking, that the specific enumerated examples found in Commission rule 1.3(z)(2) apply only to those futures contracts governed by direct federal speculative limits. As further noted in that Federal Register notice, whether particular types of option transactions should be classified as hedging must be determined by applying only the general definition contained in Commission Rule 1.3(z)(1). Accordingly, although option grantors generally cannot meet the Commission's definition of hedging and the covering of speculative futures (or option) positions with option (or futures) positions cannot be considered hedging, there may be certain instances where grantors may be *bona fide* hedgers.

⁵The Commission is also adopting a technical amendment to Commission Rule 1.61 deleting that rule provisions for a phase-in period. These provisions are no longer needed.

⁴The Commission also proposed to amend the financial early warning system applicable to futures commission merchants by extending the requirements of Commission regulation 1.12 to situations in which a margin call to an individual account (or group of related accounts) exceeded an FCM's excess adjusted net capital. As the Commission explained at the time, its proposal was intended to augment other rule amendments, margin guidelines, and related requirements that had been published in response to the failure of Volume Investors Corporation. 50 FR at 35253-54. The Commission is continuing to evaluate each of these proposals and has extended the comment period on the proposed amendments to the Commission's minimum financial and related requirements that were first proposed in August 1985. See 51 FR 7285 (March 3, 1986). The Commission believes that its proposed enhancement of the financial early warning system is best considered in conjunction with those other financial rule proposals and is not, therefore, taking any action at this time on that aspect of this rulemaking proceeding.

C. Designation Criteria

Several amendments were proposed to Commission Rule 33.4 to amend the requirements for contract market designation. The Commission proposed these modifications in light of its three years of experience with the option program. In general, the modifications being adopted simplify designation requirements. Other modifications, such as raising the initial volume of the underlying futures market required for the designation of an option market, follow from the ending of the pilot status of the program and the deletion of other limitations or designation criteria.

1. Participation of Commercial Interests.

The Commission, as proposed, is deleting the requirement of Commission Rule 33.4(a)(5)(ii) that an exchange applying for designation demonstrate that commercial interests participated in formulating the option contract. Although this requirement was necessary initially in light of general inexperience with commodity option trading when the pilot program began, exchanges currently have sufficient expertise to make such a provision unnecessary. This view was concurred in by both the exchange and commercial commenters.

2. Deep Out-of-the-Money Options.

The Commission also proposed to delete the requirement that exchanges have rules which specifically identify and govern deep-out-of-the-money options. Commission Rule 33.4(d)(2).⁶ The Commission's proposal, however, did not affect the existing requirement that the contract markets, as part of their sales practice audits, ascertain whether the offer or sale by futures commission merchants (FCMs) of such deep-out-of-the-money options is consistent with exchange rules. Commission Rule 33.4(c). Moreover, the Options Disclosure Statement that must be provided to every prospective option customer details the risks associated with both the purchase and the sale of deep-out-of-the-money options. Commission Rule 33.7(b)(6).

Although all of those commenting supported the proposed deletion of Commission Rule 33.4(b)(2), one

commenter argued that deletion of only this rule did not go far enough. It maintained that the Commission has "never made a credible case for regulating the purchase or sale of options that are deep out of the money." Accordingly, the commenter opposed the requirement that boards of trade look for such trading as part of the sale practice audits that they conduct. Moreover, the commenter objected to this requirement on the grounds that what constitutes a deep-out-of-the-money option has been ill-defined.

As the Commission stated in its proposed rulemaking, the Commission maintains its belief that the offer and sale of such options must be carefully monitored because of the financial risks and issues concerning customer protection raised by such options. A pattern of such sales can indeed be abusive as well as a financial risk in light of the low-premiums and potential risk involved. As explained by the Commission in proposing to delete Commission Rule 33.4(b)(2), these issues are expected to be addressed by net capital and other financial rules and by greater emphasis on sales practice audits. Accordingly, the Commission emphasizes that although definitions of deep-out-of-the-money options will no longer be required because such general rules tended to be less encompassing than appropriate in particular cases, a case-by-case evaluation of specific options series in conjunction with front office audits remains a requirement of the exchange sales practice audits, even in the absence of rules specifically identifying which options would be deemed to be deep-out-of-the-money for a particular contract. Thus, a pattern of such trading in options with low premiums and strike prices considerably away from the money should be considered and treated as an abusive sales practice. Accordingly, the existing requirements in Commission Rule 33.4(c) that the exchanges' sales practice audit programs include provisions for the review of member FCM sales of deep-out-of-the-money options remain effective despite the elimination of the requirement that deep-out-of-the-money options be defined by exchange rules. Despite the elimination of this requirement, exchanges are free to retain their rules concerning the definition of deep-outs or to propose ones that the exchange would consider of greater use in carrying out their sales audit programs.

3. Volume of the Underlying Futures Market Required for Designation.

The Commission proposed to raise the threshold volume level of the underlying futures contract for designation of an option on such a futures contract from the current level of 1,000 contracts per week to 3,000 contracts per week and to eliminate the current alternative non-numeric test. The Commission reasoned that an initial volume of 1,000 contracts per week generally may not be adequate to ensure that a trader would be able to exercise an option into a sufficiently liquid market so that the resulting position could be offset without suffering a substantial loss of the option's true economic value.

Commenters were generally opposed to this proposal. The tenor of those commenting on the proposal was that the Commission lacked an empirical basis for its determination to raise the volume requirement on the underlying futures contract for designation of an option. One commenter expressed the view that "the Commission has no evidence at all that permits it to make a judgement either way. In the absence of any evidence, the Commission is basing its regulations on speculation rather than fact." The commenter continued that low volume in a futures contract is not by itself evidence that the market is illiquid.

The Commission noted in its proposed rulemaking that upon reviewing the data for trading volume of all designated option contract markets, it found that all of the option markets had average volumes in the underlying futures market far in excess of the 1,000 contract per week level. Indeed, all except one of the designated contracts had average volumes at least in the range of 5,000 contracts per week. 50 FR 35250. Moreover, it appeared from the Commission's data that the 3,000 contract level separates low volume futures contracts from the higher volume contracts comparable to those now included in the pilot program.

Based on such trading experience in the pilot program, the 3,000 contract weekly level was found to be the most appropriate to ensure that options are designated only on those relatively active futures markets which will not be adversely affected by option trading. This requirement takes on added importance in light of the Commission's determination to remove the current limitation on the number of contracts permitted per exchange. A higher volume level is necessary to ensure that options will be traded only on those

⁶ Deep-out-of-the-money options are options in which the strike prices are significantly above, in the case of a call, or significantly below, in the case of a put, the current price of the underlying futures contract of physical commodity. Characteristically, the premium for these options is relatively inexpensive while the likelihood of such options' becoming profitable is remote. Nevertheless, grantors of such options may face substantial liability if there are sudden, adverse movements in the price of the underlying commodity.

contract markets which can best support such a derivative market.

Several commenters objected to the Commission's proposed deletion of the alternative designation criterion of Commission Rule 33.4(a) (5) (iii), which permitted designation upon a demonstration that there is sufficient liquidity in the cash and futures markets to prevent the disruption of those markets. The Commission maintained that the alternative test should be deleted because it did not ensure that a futures market was sufficiently liquid to avoid adverse effects from option trading. The commenters contended that the alternative test was needed to provide flexibility for designation of options on newly designated futures markets. Thus, one commenter stated that:

We believe that cases will be seen where the introduction of an option will enhance the trading volume of the underlying future to the point where the underlying futures contract easily fits within the proposed criteria. We recognize the Commission's continuing concern with manipulation in low volume situations. Despite this we believe that the economic benefits which may be gained from the low volume situation outweigh the inherent risks of manipulation that is believed to be present.

The Commission agrees that adherence to the objective test, which requires a year-long history of trading, could result in a needless delay in the introduction of option markets on newly designated contracts. That is not to say, however, that the Commission will at any time permit the simultaneous designation of a futures contract and option on a futures market with the expectation that the introduction of the two contracts at the same time will assure adequate liquidity. The designation of the derivative option market must be predicated upon a pre-existing, liquid underlying futures market.

Upon careful consideration of the comments, the experience with the pilot program and the intent of the proposal, the Commission is maintaining in Rule 33.4(a)(5)(iii) an alternative liquidity demonstration. This demonstration requires a showing that a futures market substantially meets the objective volume criterion in less than a year. The Commission expects that this provision will be most useful in instances where a newly introduced futures contract or an existing one which begins to exhibit higher volume than in the past, trades above the 3,000 contract a week level, substantially meeting the required volume level in less than a year. Under this test, the higher the trading volumes the less time would be needed to

demonstrate a liquid market, but in no event could the test be met until there has been some history concerning deliveries on the contract. The Commission believes that this provision maintains the flexibility sought by the commenters while addressing the Commission's concerns that the applicable test be related to the liquidity of the underlying futures market.

4. Additional Suggested Modifications to Designation Criteria

Several of the proposals advanced by commenters involve changes to the criteria for designation. One industry association advocated the need for uniformity and standardization in contract terms and conditions as they relate to trading mechanics. This would include standardization of expiration dates, margin requirements and exercise procedures. The commenter stated that such uniform terms and conditions would improve customer understanding and increase option usage. Although such uniformity in trading mechanics might be beneficial to some market participants, the Commission believes that as a matter of regulatory policy it should not require such uniformity. Further, exchanges may have developed differences in trading mechanics in response to differences in the mechanics of their futures trading. Accordingly, the Commission does not believe that it should require such uniformity where it is unnecessary to ensure the economic appropriateness of the option contract or to protect the public.

An exchange suggested that Commission Rule 33.4(d)(1) be deleted or amended to provide that an option expire one day, rather than the presently required ten days, before first notice day for delivery on the futures contract. The commenter suggested that the Commission's examination of this issue in granting exemptions from the current ten-day provision indicates that a shorter time period between expiration of the futures and delivery on the futures "would enhance the benefits of option trading by capturing a higher degree of convergence between cash and futures prices which occur closer to delivery period." The commenter continued that, because futures position limits apply to all positions created by option exercise, the expiration of the option in a period of less than ten days before delivery on the future would not pose serious disruption problems to futures contracts which involve physical delivery. The commenter further opined that in the case of cash-settled futures contracts, no such buffer period would be necessary.

The Commission does not agree that the rule should be changed. The

Commission believes that having a one-day buffer period between the option expiration and first notice day could lead to congestion in the liquidation of many futures contracts. This is true not only for physical delivery contracts. Accordingly, the Commission believes that continuation of the present ten-day buffer period is appropriate. As in the past, however, exchanges are free to demonstrate on a case-by-case basis why less than the stated period is more appropriate. Although this may be viewed as a more cautious approach than advocated by the commenter, the Commission must be assured that trading on a derivative market will not create congestion or interfere with deliveries on the primary market.

Several commenters stated their belief that any exchange should be allowed to trade an option on any futures contract regardless of where the underlying futures contract is traded. After careful consideration of this comment, the Commission believes such a proposal would seriously undermine the success of the option program. From its beginning, the option program has relied on exchange self-regulation. The ability of exchanges to provide for the orderly trading of both futures and options could be seriously undermined were the same exchange not charged with responsibility for regulating both the underlying futures market and its option market. Accordingly, the Commission is not amending the current requirement under Commission Rule 33.4(a)(3) that the option and its underlying futures contract be traded on the same board of trade.

Other commenters contended that the economic purpose test and speculative position limits were unnecessary for options, placing additional restrictions on futures-related option markets which put them at a competitive disadvantage to security-related option markets. While the regulatory structures for option trading in the futures and securities arenas are not identical, the Commission believes that both of these features of its option regulatory structure should be maintained. As a commenter noted, the economic purpose of the typical option is clear-cut since a related futures contract already has demonstrated such a purpose. Thus, the demonstration of an economic purpose for a particular futures-based option should be relatively easy to make. Accordingly, because the burden of that demonstration generally will not be substantial, the Commission believes that the requirement should be maintained. On an option on a physical commodity, however, no previous

demonstration of an economic purpose will have been made. Thus, although the burden of demonstrating that the proposed instrument will serve an economic purpose may therefore be greater, this requirement maintains the consistency between futures and option regulation.

With respect to speculative position limits, the Commission notes that such limits are a standard regulatory feature of both securities and commodity option trading. The Commission believes that exchange-set speculative position limits pursuant to Commission Rule 1.61 continue to serve an important regulatory function in commodity option markets. As the Commission noted previously:

Although large options positions may not have precisely the same potentially disruptive effect as large futures positions, the relationship between the options market and the futures market strongly suggests that the effect of unlimited trading in one market can pass through to the other market either directly through exercise or indirectly through arbitrage.

48 FR 50938, 50944 (October 16, 1981) Accordingly, the Commission believes that Commission Rule 1.61 should not be amended at this time.

Finally, three commenters requested that the Commission lift its ban on foreign-traded options. In this respect the Commission notes that it has recently proposed rules concerning foreign options and futures (51 FR 12104 (April 8, 1986)). It will consider the trading of foreign options in that context and will consider the comments filed in this rulemaking proceeding at that time.⁷

D. Delisting Criteria

As part of the rules making option trading permanent, the Commission proposed delisting criteria to halt trading in any option on a futures contract where the futures contract fails to maintain the requisite volume level and for any option market that itself fails to trade over a specified volume for a specified period of time. Although such requirements were unnecessary during the pilot program, when trading is made permanent it can be expected that over time the volume of trading in various markets may fluctuate greatly.

Accordingly, the Commission proposed, and is now adopting, Rule 5.4 which requires that where the total

trading volume for all trading months in the underlying future falls below an average of 1,000 contracts per week for the preceding six months, no new option expirations may be listed for trading. However, it would be expected that as prices of the underlying futures or physical commodity fluctuate substantially, at least some new strike prices would be added, as specified in exchange rules, to the remaining expirations as they trade out. Where the listing of additional option expirations has been suspended, additional expirations could be added only when trading volume in the underlying futures contract rose above an average of 2,000 contracts per week for a period of three months. These volume criteria should be computed by averaging together the total weekly volumes over the three or six-month period, as appropriate.

As explained in the notice of proposed rulemaking, the 1,000 contract per week level is the current designation requirement and, in the Commission's opinion, is the minimum acceptable level below which the individual trader in the underlying futures market may be adversely affected by the existence of a derivative market. 50 FR 3250-3251. As further explained in the proposal, a higher initial designation volume level and level needed to resume trading once the delisting mechanism has been activated are designed to avoid unduly disrupting markets based on minor volume fluctuations; such higher volume levels are set to detect generalized trends in trading volume.

In addition to the underlying futures contract, the designated option market may trade at chronically low levels or may cease to trade. Thus, the Commission proposed to include option contract markets under the requirement of Commission Rule 5.2 that designated contract markets in which no trading has occurred for all expiration months listed for trading for a period of six months shall be deemed dormant.⁸ As the Commission previously noted, the rationale for applying the dormant contract rule to futures, *i.e.*, that contracts which have not traded may have outdated terms and conditions and

⁷ In light of the prospective nature of these rule amendments, the six-month period for calculating whether a contract market is dormant begins on the effective date of this rule. Accordingly, no option contract market will be deemed to be "dormant" until at least six months following the effective date of the rule amendment. However, the three-year exemption period for newly designated contract markets is calculated from the date of designation and expires three years from that date. Thus, certain of the option contract markets which were designated in the early stages of the program no longer qualify under the exemption for newly designated markets.

that an opportunity to reassess those terms and conditions is necessary before trading can be resumed (47 FR 29515, 29517 (July 7, 1982)), is equally true with respect to option markets.⁹

Generally, those commenting opposed the delisting requirements where the underlying futures contract falls below the volume as specified. Commenters based their objections on the belief that there is no evidence to suggest that low futures volume by itself poses a problem or that the particular levels selected are arbitrary and unwarranted. The Commission does not agree with these views. Since the inception of the pilot program, the Commission has maintained the importance of approving options based on futures only where the underlying futures market has sufficient liquidity. The limitation on the number of contracts initially permitted under the pilot program and the provision for a three-year designation implicitly addressed this problem. The Commission firmly believes that with these two restrictions removed, it is necessary to assure that sufficiently liquid futures markets are the basis for option markets.

Some commenters argued that a dormant contract rule is unnecessary for options based on futures. These commenters argued that it is the underlying futures contract which will become out of date during a dormant period but that the terms of the option contract should not change over time. The Commission disagrees and believes that it is appropriate before trading is resumed in a dormant option contract to review its terms and conditions. Insofar as the option has fewer terms which may need to be changed than, for example, a futures contract specifying physical delivery, the Commission's review may be simpler and more expeditious.¹⁰

⁹ The Commission also proposed a technical amendment to Rule 5.2(c). This amendment deleted a procedure for expediting Commission approval of the proposal to resume trading under the dormant contract rule. The Commission believes that, in light of the statutory deadline for Commission review of exchange rule amendments enacted as part of the Futures Trading Act of 1982, such a separate time limit is unnecessary.

¹⁰ In light of the fact that information regarding all commercial participants in the option markets is required to be provided by exchanges under Commission Rule 16.04, the Commission did not propose that chronically low volume option contracts be included under Commission Rule 5.3. However, contract markets are expected, as a matter of diligent self-regulation, to institute adequate surveillance procedures for all contract markets and to increase such efforts where appropriate.

⁷ The Commission, pursuant to Commission Rule 32.4, additionally has authorized banks located in the United States to grant options on foreign currencies traded on the Montreal Exchange as principals for business-related purposes. 51 FR 12698 (April 15, 1986).

E. Reporting Requirements

The Commission is adopting the amendments to Rule 16.01 as proposed. These amendments require that, where a delta factor is used by an exchange (including an exchange's clearing organization) for margining positions, evaluating compliance with speculative position limits, or evaluating the financial exposure of its members, the exchange report the delta factor to the Commission on a daily basis in machine-readable form.

As the Commission explained in proposing its rules, such a requirement was not included in the initial option rules because delta systems were introduced by certain exchanges as the pilot program progressed. The use of deltas is important in the Commission's general surveillance of the markets, and the Commission should therefore know the particular delta factors used by the exchanges which trade options. Moreover, the Commission concluded that because such information was similar to that otherwise required under Rule 16.01 and is important to the financial operations of the option market, such information should be made available to the public in printed form on a daily basis.

The majority, but not all, of the commenters opposed this requirement. Typically the rationale of those opposing the requirements was that they agreed that the delta factors should be known to the Commission and the public-at-large at any particular time, but that the exchanges should be able to make available the delta formula to the Commission and the FCM community without undertaking to release the deltas on a daily basis. Thus, these commenters suggest that the Commission and the FCMs calculate the delta factors on their own.

The Commission believes that this alternative is not acceptable and that the better alternative is to require that the exchanges using delta factors make them available to both the Commission and the general public. There is a potential public impact if the exchanges use delta factors for any of the three reasons given above. It is not enough, however, to make public only the delta formulas. Results from the same delta formula may vary depending on interpretation or construction of the variables used in the formula and the particular methods of approximation used for solution. Moreover, solving the formula may require sophisticated methods beyond the means of many market participants. For this reason, public dissemination of the actual deltas used by the exchanges, rather than their

methods of calculation, is appropriate. For the same reasons, it is appropriate that the exchanges provide the Commission with the calculated delta values. It is onerous and duplicative for the Commission and FCMs to attempt to develop and maintain various systems for calculating deltas which emulate those developed by the exchanges. It is necessary, however, for general surveillance, enforcement of speculative limits and of position-based capital requirements, and oversight of the exchanges' application of their financial rules that the Commission have access to the delta factors used by the exchanges.

The Commission also proposed two amendments to Rule 16.02. These proposed changes would provide the Commission and the exchanges with specific, additional information necessary for the conduct of market surveillance. They would require that reportable positions in each option expiration be reported by strike price. These data are currently provided only for the option which is next to expire or which will expire within six weeks. Also, for those exchanges which have adopted a delta system for purposes of exchange speculative position limits, the relevant position information would be provided in hard copy on a delta equivalent basis in a form and manner approved by the Director of the Division of Economic Analysis.

Although several commenters objected to these proposed rule amendments, two supported it. One, a large futures exchange, stated that it was already providing information in the form required by the proposed rule. The other commenter, a major FCM, noted that the proposed rule was a logical extension of the present requirement and that the cost and burden of providing the additional information was minimal. Two other commenters, both futures exchanges, objected to the requirement. One of those objecting stated that had the Commission originally requested the detail proposed now, the exchange could have avoided the costs associated with a change in the reporting requirements. The exchange also maintained that sufficient information was available from the current reports and that "the current report provides the Commission with position data on reportable positions for an overwhelming fraction of the total open interest in our contracts."

Although it is unfortunate that additional resources must be spent on various programming changes, it was the nature of the pilot program that after

three years' experience certain changes were to be expected. Indeed, the very concept of a three-year pilot program was to provide a test of what would be required for permanent option trading. In this regard, it is unreasonable to assume that all details of the reports which the Commission would find necessary could have been known in advance of trading experience. Nevertheless, as indicated in these final rule amendments, the Commission has found it necessary to make few changes in its option rules at this time when the pilot status of the program is being terminated.

The reporting of option positions by expiration months to the exchanges is necessary, at the very least, for the exchanges to enforce their option and futures speculative limits. Moreover, because of various exemptions permitted by the Commission, it is necessary that for applicable markets the exchanges transmit the position data in this form to the Commission in order for the Commission to enforce its speculative limits on futures or to oversee properly exchange enforcement of their speculative position limits and position-based capital requirements.

For example, during the course of the pilot option program, the Commission has approved exchange rules allowing certain exemptions from exchange option and futures speculative limits. Further, the Commission, at the request of the exchanges, has allowed certain exemptions from federal futures speculative limits based on offsetting option positions held in the same commodity. Commonly, these exemptions include certain option and futures configurations which are offsetting and generally include conversions and reverse conversions and, less typically, delta equivalent option to futures spreads. Calculation of these configurations requires knowledge of the option expiration months in which positions are held.

Under current rules, if the Commission notes a potential violation of its speculative limits or that of an exchange, it must contact the exchange to determine the expiration months in which option positions are held. This procedure can become burdensome, given the growth in options trading generally, and, more specifically, the number of traders who appear to avail themselves of these exemptions. Finally, it should be noted that if for particular contracts open interest is concentrated in the nearby months, as suggested by one commenter, there is little additional data that the exchanges must supply. Accordingly, the Commission is

adopting the amendments to Commission Rule 16.02 as proposed.

The Commission also proposed that the requirement that contract markets conduct market-wide surveys be deleted (Commission Rule 16.05) and that Commission Rule 21.02a be amended to require FCMs to respond to special calls in machine-readable form whether or not for purposes of sample surveys. As the Commission stated in its proposed rulemaking, it has not found it effective to use Commission Rule 16.05, which relies upon exchanges to conduct market-wide surveys. Rather, the Commission has itself conducted such surveys in order to ensure better the timeliness and standardization of the survey process. The Commission believes that the amendment of these two provisions results in no net increase of the information that FCMs are required to provide. In this connection, it should be noted that no commenters objected to these provisions. The Commission therefore adopted as final the proposed amendments to Commission Rules 21.02 and 21.02a as part of a final rulemaking or related reporting requirements (51 FR 4712 (February 7, 1986)) and is hereby deleting Commission Rule 16.05.

F. Changes in Sales Practice Requirements

The Commission also proposed to modify and streamline several of the special requirements that apply under the pilot program to the offer and sale of exchange-traded options. Although the comments received by the Commission generally favored each of the Commission's proposals, several of the commenters, noting the paucity of sales practice abuses during the past three years, also apparently assumed that the termination of option trading's pilot status meant that the Commission could eliminate altogether the special safeguards that have been one of the principal features of the pilot program.

The Commission does not agree, however, that the absence of sales practice problems during the course of the pilot program is evidence that the option sales practice rules are unnecessary. On the contrary, the Commission more prudently assumes that the absence of significant sales practice problems is itself evidence of the effectiveness of the sales practice rules which were adopted by the Commission as a cornerstone of the pilot program. Indeed, and as the Commission made clear at that time, those rules were adopted by the Commission after careful consideration and in light of the Commission's prior experience with the trading of options

other than on designated contract markets during the early and mid-1970s. See 46 FR 54500, 54502-03 (November 3, 1981).

The Commission has nonetheless been willing to make appropriate modifications to those rules in light of its experience with option trading under the pilot program. The Commission therefore contemplates that it will continue to evaluate these requirements as it gains additional information with respect to public, "retail" participation in the option markets, even after the termination of the "pilot" status of option trading. The Commission notes, however, that it would expect not to diminish significantly existing option sales practice standards. Rather, the Commission anticipates that continued refinements in *futures* sales practice standards, such as those that have already been adopted by industry self-regulatory organizations in the years since the inception of the pilot program, should ultimately allow the Commission to harmonize and unify futures and option sales practice regulation.

With respect to the specific items proposed by the Commission, the commenters uniformly supported the proposed amendments to Commission regulations 33.4 (b)(4), (b)(6), and (b)(8) which would eliminate certain repetitious filings currently required of FCMs which are members of more than one self-regulatory organization. Those proposals, which are being adopted by the Commission without change, will relieve FCMs of the burden of filing copies of customer complaints, promotional material, and notices of disciplinary action with every self-regulatory organization of which the FCM happens to be a member. Those materials will now instead be filed routinely only with an FCM's designated self-regulatory organization which, as before, will have primary responsibility for monitoring its members' option sales practices.

The Commission has similarly determined that it is no longer necessary to continue to require FCMs and introducing brokers ("IBs") to reduce to writing and file with the exchanges and the National Futures Association any oral customer complaint which could result in an adjustment to a customer's account of \$1000 or more. As the Commission noted when it proposed this latter amendment, there has been little evidence of oral complaints. Of greater practical significance, the Commission expects that a customer complaint, at least of the type contemplated by the rule, would most likely be in writing. Continued retention of this aspect of

regulations 33.4(b)(4) therefore appears to be unnecessary.

By comparison, the Commission cannot agree with the suggestion made by one of the commenters that the proscription against (and duty to audit for evidence of) "high-pressure sales communications" be eliminated from Commission regulations 33.4(b)(10) and (c). Although the offer and sale of exchange-traded options generally has not been tainted by the types of practices that characterized commodity options prior to the establishment of the pilot program, the Commission must, as noted above, assume that this record is evidence of the need for standards and requirements such as the ban on high-pressure sales tactics. Indeed, the Commission believes that an effective program for the prevention of sales practice abuses would always include proscriptions against high-pressure sales tactics.

The Commission is making several clarifying changes in the provisions governing the oral and written disclosures that must be made to option customers. In particular, the Commission has determined to adopt the proposed amendment to that portion of the disclosure rule which requires FCMs and introducing brokers to provide a "description" of the futures contract physical commodity underlying a particular option. As the Commission observed when it proposed this change to § 33.7(b)(2), this requirement has been construed to require FCMs and IBs to provide to every customer a comprehensive listing of every option contract that has been designated by the Commission. These listings typically provide the details not only of the option contracts themselves and of the futures contract or physical commodity underlying those options, but subsequent amendments to any of the terms and conditions of those contracts as well. The Commission noted that such required disclosures are not likely to be of more than incidental interest to option customers, that all of this information is readily available upon request, and that compliance with this requirement appears to entail substantial operational difficulties for FCMs and IBs.

The Commission therefore proposed to require instead that FCMs and IBs identify the futures contract or physical commodity which may be purchased or sold upon exercise of an option or, if applicable, whether exercise of the option will be settled in cash. Those persons who commented on this aspect of the Commission's proposal uniformly supported this change. In particular, the

commenters stated that the existing rule was burdensome and, for the reasons identified by the Commission in its proposal, apparently unnecessary. The commenters further observed that the rule as amended would nonetheless ensure that customers continue to receive any information of which they should be aware. The Commission is, therefore, adopting this portion of its proposal without change.

Commenters did not favor the Commission's proposed modifications regarding limit moves and the overnight risk of positions which have been exercised. They maintained that such disclosures were unnecessary or might further confuse customers. The Commission is unpersuaded by these comments and is of the opinion that such disclosures provide the public with additional information concerning the risks of option trading. Accordingly, the Commission is adopting the modifications without change.

The Commission is aware that the foregoing amendments to § 33.7 will require the modification of the Options Disclosure Statement that is provided to perspective option customers by future commission merchants and introducing brokers. The Commission further recognizes that FCMs or IBs may have an inventory of such Disclosure Statements in the form currently specified by Commission regulation 33.7. The Commission has therefore determined to allow FCMs and IBs to continue to use any such existing Disclosure Statements for up to six months from the date of publication of this Federal Register notice and will not take any enforcement action with respect to the distribution, during that time, of a Disclosure Statement that has not been amended to reflect the changes to Commission regulation 33.7(b) that are today being adopted by the Commission.

One of the commenters suggested that the Commission also reconsider the oral disclosures that must, under its rules, be made prior to every option transaction. In particular, while Commission regulation 33.7(c) currently requires that certain essential information be provided to option customers prior to the entry of the first transaction for the account of an option customer, Commission regulation 33.7(d) requires other information—such as commissions, fees, and exercise charges—to be repeated prior to every option transaction. The Commission agrees that reiteration of all of this information prior to every transaction is not likely to be of significant value to customers and may, in fact, impede the

prompt transmission and execution of customer orders.

The Commission has, therefore, modified this portion of its regulations to require that certain basic information be provided to option customers prior to the first option transaction. Specifically, information relating to commissions, costs, fees and other charges to be incurred in connection with an option transaction (including any costs associated with exercise of the option) must now be provided in advance of the first option transaction but will not have to be reiterated unless that information has become inaccurate. Other items, such as the option strike price and premium, which are an integral part of each trade must, of course, continue to be disclosed to an option customer (other than a discretionary account customer) prior to each transaction.¹¹

This commenter further observed that Commission regulation 33.7(b)(2)—which comprises a portion of the required Options Disclosure Statement—could similarly be construed to require repetitive disclosures, not only of commissions, costs and fees, but also of numerous other items of information. In particular, § 33.7(b)(2) specifies that an FCM or IB "is required to provide, and the individual contemplating an option transaction should obtain, a description" of various items (such as exercise procedures, storage charges, and margin requirements) that are alluded to in that portion of the Disclosure Statement "[p]rior to entering into any transaction involving a commodity option." (Emphasis added.) The commenter therefore urged the Commission to amend the Disclosure Statement to eliminate any such requirement.

The Commission has not previously interpreted § 33.7(b)(2), however, to require that these various items be disclosed affirmatively before each trade (except to the extent that they are covered by the separate provisions of regulation 33.7(d), discussed above). Rather, the Commission contemplates that an FCM or IB will provide its customers with all of the information required under the Option Disclosure Statement prior to the entry of the first transaction, as required by § 33.7(c).

¹¹ The Commission has also deleted the requirement, formerly contained in § 33.7(c), that the limitations, if any, on the transfer of an option customer's account from one future commission merchant to another be provided in writing. This provision was originally proposed in response to perceived problems in non-domestic markets (42 FR 55538, 55546 (October 17, 1977)); to the extent this issue has any continued relevance to trading under the pilot program, the Commission believes that the underlying problem is adequately addressed by rules of the various self-regulatory organizations.

Thereafter, and as discussed above, § 33.7(d) will require an FCM or IB routinely to provide only that information (such as strike price and premium) which is related to a specific transaction unless additional disclosures are necessary to keep current any of the information that has previously been provided.¹²

III. Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et. seq., requires that agencies, in proposing rules, consider the impact of these rules on small businesses. The Commission has previously determined that contract markets are not "small entities" for purposes of the FRA. 47 FR 18618 (April 30, 1982). These proposed rules would permit and govern the trading of options on various contract markets and therefore, if promulgated, would not have significant economic impact on a substantial number of small entities. Accordingly, for the above reason and pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission invited comments from any firms or other persons which believed that the promulgation of these rule amendments might have a significant impact upon their activities. No such comments were received.

B. Paperwork Reduction Act

The Commission has submitted to the Director of the Office of Management and Budget (OMB) pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), an explanation and details of the information collections required under these rules. A copy of this Federal

¹² An FCM or IB continues to remain obligated, under Commission Rule 33.7(f), to "disclose all material information to existing or prospective option customers even if the information is not specifically required" by the Commission's option disclosure rule. Furthermore, and as the Commission has previously indicated, an FCM or IB must additionally acquaint itself sufficiently with the personal circumstances of each option customer to determine what further facts, explanations and disclosures are needed in order for that particular option customer to make an informed decision whether to trade options. The procedures to be followed by the prudent FCM or IB in ascertaining those personal circumstances may require an FCM or IB to make an inquiry into an option customer's sophistication for purposes of determining to what extent risk disclosure above and beyond the disclosure statement itself might be advisable. 45 FR 54500, 54507 (November 3, 1981).

Register notice is also being sent to OMB. These rules amend existing rules which have been assigned OMB control numbers 3038-0007, 3038-0012, and 3038-0022. In response to the Commission's invitation for comments (50 FR 35255), several commenters questioned certain of the proposed amendments to the reporting requirements. The Commission has considered these comments carefully and has discussed them in detail above.

List of Subjects in 17 CFR Part 33

Commodity exchange, Commodity exchange designation procedures, Commodity exchange rules, Commodity futures, Commodity options, Customer protection, Contract markets, Dormant Contracts Disclosure requirements, Financial rules, Fraud, Hedging, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and in particular, sections 2(a)(1)(A), 4c(b), 4c(c), 4c(d), 5, 5a, 6 and 8a thereof, 7 U.S.C. 2, 4, 6c(a), 6c(b) 6c(c), 6c(d), 7, 7a, 8 and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 19, 21, 23, and 24 unless otherwise noted.

2. Section 1.3 is amended by revising paragraph (z)(1) introductory text, (z)(1)(iii), and the undesignated text at the end of (z)(1) to read as follows:

§ 1.3 Definitions.

(z) *Bona fide hedging transactions and positions.*

(1) *General definition.* Bona fide hedging transactions and positions shall mean transactions or positions in a contract for future delivery on any contract market, or in a commodity option, where such transaction or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and where they are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, and where they arise from:

(iii) The potential change in the value of services which a person provides,

purchases, or anticipates providing or purchasing.

Notwithstanding the foregoing, no transactions or positions shall be classified as bona fide hedging unless their purpose is to offset price risks incidental to commercial cash or spot operations and such positions are established and liquidated in an orderly manner in accordance with sound commercial practices and, for transactions or positions on contract markets subject to trading and position limits in effect pursuant to section 4a of the Act, unless the provisions of paragraphs (z) (2) and (3) of this section and §§ 1.47 and 1.48 of the regulations have been satisfied.

3. Section 1.46 is amended by revising paragraph (d)(1) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(d) * * *

(1) Purchases or sales of commodity options constituting "bona fide hedging transactions" pursuant to rules of the contract market which have been adopted in accordance with the requirements of § 1.61(b) and approved by the Commission pursuant to Section 5a(12) of the Act; *Provided*, that no contract market or futures commission merchant shall permit such option positions to be offset other than by open and competitive execution in the trading pit or ring provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity option.

4. Section 1.61 is amended by revising paragraphs (b)(2) and (c) to read as follows:

§ 1.61 Speculative position limits.

(b) * * *

(2) No bylaw, rule, regulation or resolution adopted pursuant to paragraph (b)(1) of this section shall apply to positions held by commercial interests in the underlying commodity which are determined by a contract market to be bona fide hedging positions as defined by a contract market in accordance with § 1.3(z)(1) of this chapter; *Provided*, that the contract market may limit bona fide hedging positions which it determines are not in accord with sound commercial practices or exceed an amount which may be established and liquidated in an orderly fashion.

(c) *Time of filing.* Boards of trade seeking designation as a contract market in options or futures shall submit

rules, bylaws, regulations or resolutions pursuant to this section with their application for designation.

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

5. The authority citation for Part 5 is revised to read as follows:

Authority: 7 U.S.C. 6c, 7, 7a, 8 and 12a, unless otherwise noted.

6. Section 5.2 is revised to read as follows:

§ 5.2 Dormant contracts.

(a) *Definitions.* For purposes of this section:

(1) The term "dormant contract market" means any commodity futures or option contract market:

(i) In which no trading has occurred in any future or option expiration for a period of six complete calendar months; or

(ii) Which has been certified by a board of trade to the Commission to be a dormant contract market.

(b) *Listing of additional futures trading months of option expirations.* No dormant contract market may list additional months or expirations for trading, or otherwise permit trading to recommence in such a dormant contract market, until such time as the Commission approves, pursuant to section 5a(12) of the Act and § 1.41(b) of these regulations, the bylaw, rule, regulation or resolution of the contract market submitted to the Commission pursuant to paragraph (c) of this section.

(c) *Bylaw, rule, regulation or resolution to list additional trading months or expirations.* (1) Any bylaw, rule, regulation or resolution of a contract market to list additional trading months or expirations in a dormant contract market or to otherwise recommence trading in such a contract market shall be submitted to the Commission under Section 5a(12) of the Act and § 1.41(b) of these regulations.

(2) Each submission shall include the information required to be submitted pursuant to § 1.41(b) of these regulations and also shall:

(i) Clearly designate the submission as filed pursuant to Commission Rule 5.2.

(ii) Contain an economic justification for the listing of additional months or expirations in the dormant contract market, which shall include an explanation of those economic conditions which have changed subsequent to the time the contract became dormant and an explanation of how any new terms and conditions

which are now being proposed by the contract market, or which have been proposed for an option market's underlying futures contract market, would make it reasonable to expect that the futures or option contract will be used on more than an occasional basis for hedging or price basing.

(d) *Exemptions.* No contract market shall be considered dormant until the end of thirty-six (36) complete calendar months:

- (1) Following designation;
- (2) Following notice to the contract market that the Commission has reviewed the economic purpose and the terms and conditions of the contract and has determined in its discretion to permit this exemption; or
- (3) Following Commission approval of the contract market bylaw, rule, regulation, or resolution submitted pursuant to paragraph (c) of this section.

7. Part 5 is amended by adding a new § 5.4 to read as follows:

§ 5.4 Delisting criteria for options.

For options on a designated futures contract market, where the trading volume of the underlying futures contract market falls below an average of 1,000 contracts per week for all trading months listed during the preceding six month period, no new expiration months may be listed for trading. New expiration months may be added in accordance with rules of the contract market when trading volume in the underlying designated futures contract market rises above an average of 2,000 contracts per week for all trading months listed for a period of three consecutive months.

PART 16—REPORTS BY CONTRACTS MARKETS

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

Authority: 7 U.S.C. 6a, 6c, 6g, 6i, 7, and 12a, unless otherwise noted.

9. Section 16.01 is amended by revising paragraphs (a) (5) and (a) (6), adding (a)(7), and revising the undersigned text at the end of (a) to read as follows:

§ 16.01 Trading volume, open contracts and prices.

- (a) * * *
- (5) The total number of option contracts exercised;
 - (6) The total number of option contracts that expired unexercised; and
 - (7) The option delta, where a delta system is used.

This information shall be made readily available to the new media and the general public in printed form and

without charge at the office and trading floor of the contract market no later than the business day following the day for which publication is made.

10. Section 16.02 is amended by revising paragraphs (a) introductory text, (a)(1)(i) (A), (B) and (C), removing (a)(1)(i) (D) and (E), revising (a)(1)(ii) (A) through (D), and by adding paragraph (a)(1) (iv) to read as follows:

§ 16.02 Large option trader reports.

(a) *Information required.* Each contract market shall submit to the Commission a weekly report for options on futures and for options on physicals that are settled in cash and, unless otherwise determined by the Commission, a daily report on all other options on physicals, containing the following information for each option trader controlling a reportable option position.

- (1)(i) * * *
- (A) All reportable position by expiration month and by strike price;
 - (B) The total reportable position controlled by the option trader by expiration month, regardless of strike prices; and
 - (C) The total reportable position controlled by the option trader in all option expiration dates, regardless of strike prices.

- (ii) * * *
- (A) All reportable positions by expiration month and by strike price;
 - (B) The total reportable position controlled by the option trader by expiration month regardless of strike prices;
 - (C) The total reportable position controlled by the option trader in all option expiration dates, regardless of strike prices; and
 - (D) The number of contracts exercised.

(iv) For those option contract markets which have adopted an option delta system for purposes of enforcing exchange speculative position limits pursuant to § 1.61 of this chapter, the information required by paragraph (a) of this section shall also be submitted in hard copy form on a delta-equivalent basis in a form and manner approved by the Director of the Division of Economic Analysis.

11. Part 16 is amended by removing and reserving § 16.05.

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

12. The authority citation for Part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a-1, 13b, 19 and 21 unless otherwise noted.

13. Section 33.4 is amended by removing and reserving paragraph (a)(5)(ii), revising paragraphs (a)(5)(iii) and (a)(6)(ii), removing and reserving paragraph (b)(2), and revising paragraphs (b)(4) introductory text, (b)(4)(i), (b)(4)(iii), (b)(6) and (b)(8) to read as follows:

§ 33.4 Designation as a contract market for the trading of commodity options.

- (a) * * *
- (5) * * *
- (ii) [Reserved]
- (iii) For options on futures contracts, the volume of trading in all contract months for future delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such futures contract market for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than 12 months preceding the date of application; and

- (ii) For commodities not specifically enumerated in section 2(a)(1)(A) of the Act, is not designated as a contract market for more than one other option on a physical

- (b) * * *
- (2) [Reserved]
- (4) Require, with respect to all written option customer complaints, that each member futures commission merchant which engages in the offer or sale of commodity options regulated under this Part:

- (i) Retain all such complaints;
- (iii) Immediately send a copy of any such complaint to the member's designated self-regulatory organization and, upon final disposition thereof, immediately send a copy of the record of such disposition to the member's designated self-regulatory organization.

(6) Require each member futures commission merchant which engages in the offer or sale of option contracts regulated under this Part to give to the member's designated self-regulatory organization notice of any disciplinary

action taken against the futures commission merchant or any of its associated persons by the Commission or by another self-regulatory organization.

(8) Require each member futures commission merchant which engages in the offer or sale of option contracts regulated under this Part promptly to submit to the member's designated self-regulatory organization all promotional material (as defined in § 33.1). Such promotional material must be promptly reviewed by the designated self-regulatory organization to determine that such material is not fraudulent.

15. Section 33.5 is amended by revising paragraph (c) to read as follows:

§ 33.5 Application for designation as a contract market for the trading of commodity options.

(c) For options on a futures contract on a commodity specifically enumerated in section 2(a)(1)(A) of the Act, the effective period for designation as a contract market for a particular commodity option under this Part shall be for a period not to exceed three years from the effective date of the designation, or such shorter period as the Commission may specify at the time the designation is granted, and in any event shall be of no further force or effect should the Commission, by rule or regulation, repeal the provisions of this Part under which such designation is granted. Except as may be specifically authorized by the Commission, no board of trade which has been designated as a contract market for the trading of commodity options may authorize or allow the trading of any commodity option which will expire after the termination of the effective period of such designation or where the delivery month of the futures contract underlying such option is later than the termination of the effective period of such designation or where the delivery month for the underlying futures contract has not been listed.

16. Section 33.7 is amended by revising paragraphs (b)(2) introductory text and (b)(2)(i), by removing paragraph (b)(2)(ii) and by redesignating paragraph (b)(2)(iii)-(b)(2)(viii) as paragraphs (b)(2)(i)-(b)(2)(vii), and by revising paragraphs (b)(3), (b)(5), (c), and (d) to read as follows:

§ 33.7 Disclosure.

(b) * * *

(2) *Description of commodity options.* Prior to entering into any transaction involving a commodity option, an individual should thoroughly understand the nature and type of option involved and the underlying futures contract or physical commodity. The futures commission merchant or introducing broker is required to provide, and the individual contemplating an option transaction should obtain:

(i) An identification of the futures contract or physical commodity underlying the option and which may be purchased or sold upon exercise of the option or, if applicable, whether exercise of the option will be settled in cash;

(3) *The mechanics of option trading.* Before entering into any exchange-traded option transaction, an individual should obtain a description of how commodity options are traded.

Option customers should clearly understand that there is no guarantee that option positions may be offset by either a closing purchase or closing sale transaction on an exchange. In this circumstance, option grantors could be subject to the full risk of their positions until the option position expires, and the purchaser of a profitable option might have to exercise the option to realize a profit.

For an option on a futures contract, an individual should clearly understand the relationship between exchange rules governing option transactions and exchange rules governing the underlying futures contract. For example, an individual should understand what action, if any, the exchange will take in the option market if trading in the underlying futures market is restricted or the futures prices have made a "limit move."

The individual should understand that the option may not be subject to daily price fluctuation limits while the underlying futures may have such limits, and, as a result, normal pricing relationships between options and the underlying future may not exist when the future is trading at its price limit. Also, underlying futures positions resulting from exercise of options may not be capable of being offset if the underlying future is at a price limit.

(5) *Profit potential of an option position.* An option customer should carefully calculate the price which the underlying futures contract or underlying physical commodity would have to reach for the option position to become profitable. This price would include the amount by which the

underlying futures contract or underlying physical commodity would have to rise above or fall below the strike price to cover the sum of the premium and all other costs incurred in entering into and exercising or closing (offsetting) the commodity option position.

Also, an option customer should be aware of the risk that the futures price prevailing at the opening of the next trading day may be substantially different from the futures price which prevailed when the option was exercised. Similarly, for options on physicals that are cash settled, the physicals price prevailing at the time the option is exercised may differ substantially from the cash settlement price that is determined at a later time. Thus, if a customer does not cover the position against the possibility of underlying commodity price change, the realized price upon option exercise may differ substantially from that which existed at the time of exercise.

(c) Prior to the entry of the first commodity option transaction for the account of an option customer, a futures commission merchant or an introducing broker, or the person soliciting or accepting the order therefor, must provide an option customer with all of the information required under the disclosure statement, including the commissions, costs, fees and other charges to be incurred in connection with the commodity option transaction and all costs to be incurred by the option customer if the commodity option is exercised: *Provided*, That the futures commission merchant or the introducing broker, or the person soliciting or accepting the order therefor, must provide current information to an option customer if information provided previously has become inaccurate.

(d) Prior to the entry into a commodity option transaction on or subject to the rules of a contract market, each option customer or prospective option customer shall, to the extent the following amounts are known or can reasonably be approximated, be informed by the person soliciting or accepting the order therefor of the amount of the strike price and the premium (and any mark-ups thereon, if applicable).

Issued in Washington, DC on May 7, 1986, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-10736 Filed 5-12-86; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances: Rescheduling of Synthetic Dronabinol in Sesame Oil and Encapsulated in Soft Gelatin Capsules From Schedule I to Schedule II; Statement of Policy

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final Rule and Statement of Policy.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to transfer U.S. Food and Drug Administration (FDA) approved drug products that consist of synthetic dronabinol in sesame oil encapsulated in soft gelatin capsules from Schedule I into Schedule II of the Controlled Substances Act (CSA). Dronabinol is the synthetic equivalent of the isomer of delta-9-tetrahydrocannabinol (THC) which is the principal psychoactive substance in *Cannabis sativa L.*, marijuana. This action is based on a finding that U.S. Food and Drug Administration approved drug products which contain dronabinol fit the statutory criteria for inclusion in Schedule II of the CSA. As a result of this rule, the regulatory controls and criminal sanctions of Schedule II of the CSA will apply to the manufacture, distribution, importation and exportation of dronabinol pharmaceutical products. This rule does not affect the Schedule I status of any other substance, mixture or preparation which is currently included in 21 CFR 1308.11(d)(21), Tetrahydrocannabinols. The Administrator herein also issues a statement of policy regarding review, under the public interest criteria of 21 U.S.C. 823(f) and 824(a)(4), of the DEA registrations of practitioners who distribute or dispense dronabinol for purposes at variance with the FDA approved indications for use of the approved product. A notice is published elsewhere in this issue of the **Federal Register** that withdraws the proposed rule entitled Changes in Protocol Requirements for Researchers and Prescription Requirements for Practitioners (50 FR 42184-42186, October 18, 1985).

EFFECTIVE DATE: May 13, 1986.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Office of Diversion Control, Drug Enforcement

Administration, Washington, DC 20537. Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION:**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

A proposed rule was published in the **Federal Register** on October 18, 1985 (50 FR 42186-42187), proposing that dronabinol in sesame oil and encapsulated in soft gelatin capsules in a drug product approved by the U.S. Food and Drug Administration be transferred from Schedule I to Schedule II of the Controlled Substances Act (21 U.S.C. 801 et seq.). Concurrently, a proposal was published which proposed changes in protocol requirements for researchers and prescription requirements for practitioners (50 FR 42184-42186). Interested persons were given until November 18, 1985, to submit comments or objections regarding each of the proposals.

Thirteen individuals or organizations availed themselves of the opportunity to comment, object or request an administrative hearing. Two organizations, Cannabis Corporation of America and National Organization for the Reform of Marijuana Laws (NORML), requested hearings. Both requests for hearings were subsequently withdrawn. Comments or objections were submitted by or on behalf of the following: Alliance for Cannabis Therapeutics, American College of Neuropsychopharmacology, American Medical Association, American Pharmaceutical Association, Arkansas Department of Health, Committee on Problems of Drug Dependence, Inc., Mr. Anis M. Helmanis, the law offices of Kleinfeld, Kaplan and Becker, Marcos A. S. Lima, M.D., H. G. Pars Pharmaceutical Laboratories and the Pharmaceutical Manufacturers Association.

Having considered the comments and objections presented by the above listed parties, the requirements of the Controlled Substances Act and the Convention on Psychotropic Substances (T.I.A.S. 9725, July 15, 1980), the Administrator has decided (a) to proceed with the rescheduling of dronabinol as proposed at 50 FR 42186-42187 and (b) to issue a statement of policy regarding review of the distribution or dispensing of dronabinol by practitioner registrants which deviates from approved medical use to insure compliance with the obligations of the United States as a signatory to the Convention on Psychotropic Substances. The previously proposed regulations relating to dronabinol are withdrawn

elsewhere in this issue of the **Federal Register**.

(a) Transfer of FDA Approved Dronabinol Drug Products From Schedule I to Schedule II

Having considered the comments and objections presented by the above listed parties and based on the investigations and review of the Drug Enforcement Administration, with attention to the obligations of the United States under the Convention on Psychotropic Substances, and relying on the scientific and medical evaluation and recommendation of the Assistant Secretary for Health of the Department of Health and Human Services, acting on behalf of the Secretary of the Department of Health and Human Services, in accordance with 21 U.S.C. 811(b), and the Food and Drug Administration approval of a new drug application for Marinol capsules, the Administrator of the Drug Enforcement Administration, pursuant to the provisions of 21 U.S.C. 811(a), finds that:

1. Dronabinol (synthetic) in sesame oil and encapsulated in soft gelatin capsules in a U.S. Food and Drug Administration approved drug product has a high potential for abuse;
2. Dronabinol (synthetic) in sesame oil and encapsulated in soft gelatin capsules in a U.S. Food and Drug Administration approved drug product has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions, and
3. Dronabinol (synthetic) in sesame oil and encapsulated in soft gelatin capsules in a U.S. Food and Drug Administration approved drug product may lead to severe psychological or physical dependence.

The above findings are consistent with placement of dronabinol approved drug products into Schedule II of the CSA. The transfer of the product from Schedule I to Schedule II is effective on May 13, 1986 with selected implementation dates as indicated. In the event that this imposes special hardships on any registrant, the Drug Enforcement Administration will entertain any justified request for an extension of time to comply with the Schedule II regulations. The applicable regulations are as follows:

1. **Registration.** Any person who manufactures, distributes, delivers, imports or exports a FDA approved dronabinol drug product, or who engages in research or conducts instructional activities with such a substance must be registered to conduct such activities in accordance with Parts

1301 and 1311 of Title 21 of the Code of Federal Regulations. Any person currently registered to handle dronabinol in Schedule I may continue activities under that registration until approved or denied registration in Schedule II, provided such registrant has filed an application for registration in Schedule II with DEA on or before June 12, 1986. Any persons not currently registered and proposing to engage in such activities may not conduct activities with the drug product until properly registered in Schedule II.

2. *Security.* FDA approved dronabinol drug products must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(a), (c) and (d), 1301.73, 1301.74, 1301.75(b) and (c) and § 1301.76 of Title 21 of the Code of Federal Regulations. Dronabinol and all mixtures, compounds and preparations thereof, except for dronabinol in sesame oil and encapsulated in soft gelatin capsules in a FDA approved drug product, remain in Schedule I and must be stored in accordance with § 1301.75(a).

3. *Labeling and Packaging.* All labels and labeling for commercial containers of FDA approved dronabinol drug products must comply with the requirements of §§ 1302.03-1302.05 and 1302.07-1302.08 of Title 21 of the Code of Federal Regulations. Current products distributed or dispensed for approved research and labeled as Schedule I products may continue to be distributed and dispensed until May 13, 1987.

4. *Quotas.* All persons required to obtain quotas for dronabinol drug products shall submit applications pursuant to §§ 1303.12 and 1303.22 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of FDA approved dronabinol drug product shall take an inventory, pursuant to § 1304.04 and §§ 1304.11-1304.19 of Title 21 of the Code of Federal Regulations, of all stocks on hand as of June 12, 1986.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21-1304.27 of Title 21 of the Code of Federal Regulations shall do so regarding FDA approved dronabinol drug products.

7. *Reports.* All registrants required to submit reports pursuant to §§ 1304.34-1304.37 of Title 21 of the Code of Federal Regulations shall do so regarding FDA approved dronabinol drug products.

8. *Order Forms.* All registrants involved in the distribution of dronabinol drug products shall comply with the order form requirements of Part

1305 of Title 21 of the Code of Federal Regulations.

9. *Prescriptions.* FDA approved dronabinol drug products have been approved for use in medical treatment and the drug may be dispensed by prescription. All prescriptions for FDA approved dronabinol drug products shall comply with §§ 1306.01-1306.06 and §§ 1306.11-1306.15 of Title 21 of the Code of Federal Regulations.

10. *Importation and Exportation.* All importation and exportation of dronabinol drug products shall be in compliance with Parts 1311 and 1312 of Title 21 of the Code of Federal Regulations.

11. *Criminal Liability.* Any activity with respect to FDA approved dronabinol drug products not authorized by or in violation of the Controlled Substances Act or the Controlled Substances Import and Export Act continues to be unlawful. The applicable penalties after May 13, 1986 shall be those of a Schedule II substance.

12. *Other.* In all other respects, this order is effective on May 13, 1986.

(b) Statement of Policy

The Administrator takes special note of the fact that synthetic tetrahydrocannabinol in all forms, including dronabinol, remains internationally controlled in Schedule I of the Convention on Psychotropic Substances. Under the special obligations of the Convention, to which the United States is a party, relative to Schedule I substances, Article 7 requires in part that parties shall "prohibit all use except for scientific and very limited medical purposes . . ." (emphasis added). The Administrator also notes that the official "Commentary on the Convention on Psychotropic Substances" provides guidance to parties in meeting this obligation consistent with national laws and policies.

The Administrator finds that the existing requirements of Schedule II of the Controlled Substances Act can provide adequate controls and restrictions to comply with the obligations of the Convention on Psychotropic Substances when coupled with effective oversight and enforcement, such as provided for in the Dangerous Drug Diversion Control Act of 1984 (part B of chapter V of Title II of Pub. L. 98-473). The Administrator notes that experience has demonstrated that there are medical practitioners registered to dispense Schedule II substance who abuse that registration and prescribe or dispense Schedule II

substances outside the scope of the legitimate medical practice.

On May 31, 1985, the Food and Drug Administration (FDA) approved the drug product, Marinol capsules, containing dronabinol for nausea associated with cancer treatment. Considering the nature of this drug, it is reasonable to assume that drug abusers will attempt to seek out practitioner registrants willing to prescribe the drug for abuse purposes, under the guise of legitimate medical practice, as frequently occurs with other Schedule II substances. DEA has encountered practitioners who attempt to justify illegal or improper distribution or dispensing by claiming unique knowledge of a drug's effectiveness for a broad range of medical indications. While it is expected that legitimate structured research programs may document additional medical indications for dronabinol, prescribing which deviates from the recognized approved medical use must be questioned in keeping with the United States obligations to prohibit all use except for scientific and very limited medical purposes.

Therefore, in keeping with sound domestic drug control policy and the United States obligations under the Convention on Psychotropic Substances, the Administrator hereby issues this statement of policy:

Any person registered by DEA to distribute, prescribe, administer or dispense controlled substances in Schedule II who engages in the distribution or dispensing of dronabinol for medical indications outside the approved use associated with cancer treatment, except within the confines of a structured and recognized research program, may subject his or her controlled substances registration to review under the provisions of 21 U.S.C. 823(f) and 824(a)(4) as being inconsistent with the public interest. DEA will take action to revoke that registration if it is found that such distribution or dispensing constitutes a threat to the public health and safety, and in addition will pursue any criminal sanctions which may be warranted under 21 U.S.C. 841(a)(1). See United States v. Moore, 423 U.S. 122 (1975).

The proposed rule which was published at 50 FR 42184-42186, October 18, 1985, entitled Changes in Protocol Requirements for Researchers and Prescription Requirements for Practitioners, is withdrawn elsewhere in this issue of the Federal Register.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291 (46

FR 13193), this statement of policy has been submitted for review by the Office of Management and Budget. In accordance with the provisions of 21 U.S.C. 811(a), this order to reschedule certain drug products which contain synthetic dronabinol from Schedule I to Schedule II is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and as such have been exempted from the consultation requirements of Executive Order 12291.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the rescheduling of formulations which contain dronabinol, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980). This action will allow the marketing of a drug product which has been approved by the FDA.

Pursuant to the authority vested in the Attorney General by section 201(a) of the CSA [21 U.S.C. 811(a)], as redelegated to the Administrator of the Drug Enforcement Administration by 28 CFR 0.100, and for the reasons set forth above, the Administrator hereby orders that 21 CFR 1308.12 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. 21 CFR 1308.12 is amended by redesignating the existing paragraph (f) as paragraph (g) and by adding a new paragraph (f), reading as follows:

§ 1308.12 Schedule II.

(f) *Hallucinogenic substances.*

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product..... 7369

[Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol]

Dated: May 1, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-10724 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Approval of Permanent Program Amendments From the State of Indiana Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of amendments to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On January 31, 1986, Indiana submitted amendments to its program requirements regarding civil penalties, incidental boundary revisions and use of explosives.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director, OSMRE, has determined that the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving these amendments. The Federal rules at 30 Part 914 which codify decisions concerning the Indiana program are being amended to implement this action.

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

EFFECTIVE DATE: May 13, 1986

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269-2600.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Indiana State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 *Federal Register* (47 FR 32071-32108). Subsequent actions concerning

the Indiana program are identified in 30 CFR 914.15 and 30 CFR 914.16.

II. Discussion of Proposed Amendment

On January 31, 1986, the Indiana Department of Natural Resources submitted to OSMRE pursuant to 30 CFR 732.17, proposed State program amendments for approval (Administrative Record No. IND 0453). The amendments modify requirements for civil penalty assessments, incidental boundary revisions and use of explosives.

OSMRE published a notice in the *Federal Register* on February 26, 1986, announcing receipt of the proposed program amendments and procedures for the public comment period and for requesting a public hearing on the substantive adequacy of the proposed amendments (51 FR 6751). The public comment period ended March 28, 1986. There was no request for a public hearing and the hearing scheduled for March 24, 1986, was not held.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendments submitted by Indiana on January 31, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII. Only those areas of particular interest are discussed below in the specific findings. Discussion of only those provisions for which findings are made does not imply any deficiency in any provisions not discussed.

Civil Penalties

Indiana has amended 310 IAC 12-6-11 to provide that the regulatory authority shall assess a penalty for a violation which leads to a cessation order and for notices of violation assigned 31 points or more under the point system established in 310 IAC 12-6-12.5. The rule provides that the regulatory authority may assess a penalty for 30 points or less. Under the rule, a penalty of \$5000 per day shall be assessed for mining without a permit, except under certain circumstances.

Indiana has amended 310 IAC 12-6-12 to establish the requirements for assigning points for penalties based on certain factors. The factors to be considered are: The permittee's history of violations at the particular operation (up to 30 points); the seriousness of the violation for which the penalty is being assessed (up to 15 points); the degree of the permittee's negligence or fault in the violation (up to 25 points); and degree of good faith determined from the permittee's efforts to abate the violation (up to negative 30 points).

Indiana has added 310 IAC 12-6-12.5 to establish the number of dollars to be assessed against the permittee depending upon the number of points assigned to a violation. The dollar amounts range from \$20 for 1 point to \$5000 for 70 points and above.

Section 518(j) of SMCRA requires that civil and criminal penalties of a State program shall incorporate penalties no less stringent than those set forth in section 518 and contain the same or similar procedural requirements relating to those penalties.

The requirements of SMCRA section 518 which are pertinent to Indiana's amendments are the requirements in section 518(a) that: Permittees may be assessed a penalty for violations; cessation orders under section 521 shall be assessed a civil penalty; penalties shall not exceed \$5000 for each violation; consideration shall be given to the four factors listed in 518(a) in determining the amount of the penalty. The Director finds that the Indiana rules address these requirements in a manner that is no less stringent than section 518(a) of SMCRA.

The Federal regulations implementing section 518 of SMCRA are contained in 30 CFR Part 845. The counterpart rules to these amended Indiana rules are found in 30 CFR 845.13, which establishes a point system for penalties, and 30 CFR 845.14, which establishes requirements for determination of the amount of penalty. These Federal rules establish a system which implements the requirements in SMCRA section 518(a) for assessment of penalties, including the requirement to assess a penalty for violations which lead to a cessation order, and for considering four factors in determining the amount of a penalty. The four factors contained in SMCRA and the Federal rules are: the history of previous violations at a particular operation; the seriousness of the violation; negligence of the person to whom the notice is issued; and good faith shown in attempting to achieve compliance.

The Indiana system for penalty determinations and assessments is similar to the Federal system under 30 CFR Part 845 in that Indiana assesses points based on the four factors for consideration contained in SMCRA section 518(a). The Indiana penalty determination system differs from the Federal system in that it allows up to a negative 30 points for good faith while the Federal rules allow only up to negative 10 points for good faith; however, the Director finds that the Indiana system properly considers all factors in a manner that is no less stringent than SMCRA and is consistent

with the Federal regulations. The Indiana system assesses a dollar amount based on the number of points assessed for a violation which the Director finds consistent with the system in 30 CFR Part 845 and no less stringent than the requirements of SMCRA 518(a).

Incidental Boundary Revisions

Indiana has made minor editorial changes to 310 IAC 12-3-121 to simplify the cross references in paragraph (b)(2).

Indiana has added paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and (c)(6) to 310 IAC 12-3-121, to define which permit revisions are considered "incidental boundary revisions."

Paragraph (c)(1) of 310 IAC 12-3-121 defines incidental boundary revisions as those which: Do not constitute a significant departure from the method of conduct of mining or reclamation in the original permit, as defined in 310 IAC 12-3-121(a)(1); are required for orderly and continuous mining and reclamation; adjoin the permit acreage; will be mined and reclaimed in conformity with the approved permit; and, do not exceed 10 percent of the original permit acres or 20 acres, whichever is less. Paragraph (c)(2) limits the aggregate of all incidental boundary revisions for the permit to 15 percent of the original permit area, except that the aggregate of such revisions that involve removal of coal shall not exceed 10 percent of the original permit area. The rule provides regulatory authority discretion to waive the 15 percent limitation if all the other requirements of 310 IAC 12-3-121(c)(1) are met and the interests of the public will not be adversely affected.

The Director finds Indiana's definition of incidental boundary revisions and aggregate area restrictions upon incidental boundary revisions to be consistent with the requirements in SMCRA section 511(a) which provide for treatment of incidental boundary revisions distinct from other extensions to the area covered by the permit. The Director finds the rules to be no less effective than the Federal rules for permit revision at 30 CFR 774.13(d) which do not contain specific criteria for determining which revisions to the permit would be considered incidental boundary revisions.

Paragraph (c)(3) of 310 IAC 12-3-121 lists the information required to be submitted in the application for an incidental boundary revision, including, among other listed items of information, a statement indicating whether any areas unsuitable for mining are contained in the area to be added. Paragraph (c)(4) requires that no application shall be approved unless the

applicant demonstrates and the regulatory authority finds that reclamation as required by the Indiana program can be accomplished, the application complies with the requirements of the Indiana program and the pertinent findings required by 310 IAC 12-3-112 are made.

The Director finds these requirements to be consistent with the provisions of SMCRA section 511(a)(2) which require that the regulatory authority, before approving an application for a permit revision, shall find that reclamation as required by SMCRA and the State program can be accomplished. The Director finds the Indiana rule no less effective than the Federal rule at 30 CFR 774.13(c) which requires further that the applicant demonstrate and the regulatory authority find that applicable findings under 30 CFR 773.15(c) (which include a finding of no area unsuitable for mining) are met and the application for a revision complies with all requirements of SMCRA and the regulatory program.

Paragraph (c)(5) of 310 IAC 12-3-121 requires the regulatory authority to approve or disapprove the incidental boundary revision within 30 days, but allows the regulatory authority to extend the limit beyond 30 days if it is not sufficient time. The Director finds the paragraph no less effective than 30 CFR 774.13(b) which requires the regulatory authority to establish a time limit for decisions on permit revision applications.

Paragraph (c)(6) of 310 IAC 12-3-121 states that nothing in subsection (c) shall be construed to alter the requirements in the Indiana program for submittal of fees and bond. The Director finds this no less effective than the Federal requirements for permit revisions in 30 CFR 774.13.

Use of Explosives

Indiana has amended its regulatory requirement pertaining to use of explosives in response to required program amendments codified at 30 CFR 914.16(b) and announced in the October 19, 1984 *Federal Register* (49 FR 41020).

Indiana has amended 310 IAC 12-5-34(e) and 12-5-100(e) to provide that if a preblasting survey is conducted by a permittee upon its own initiative as part of a voluntary program, where no request has been made to the regulatory authority or the permittee, the survey need not be submitted to the regulatory authority. The Director finds that these changes satisfactorily address the requirement in 30 CFR 914.16(b)(1).

Indiana has amended 12-5-36(e)(4) and 12-5-101(e)(4) to require that, if

necessary to prevent damage, the regulatory authority shall specify lower maximum allowable airblast levels than those required in the rule, for use in the vicinity of a specific blasting operation. The Director finds that these changes satisfactorily address the required amendment in 30 CFR 914.16(b)(4).

Indiana rules 310 IAC 12-5-36(f) and 12-5-101(f) are amended to add the requirement that flyrock not be cast beyond the boundary of the bonded area. Although 30 CFR 914.16(c)(3) specified that Indiana amend 310 IAC 12-5-36(f) and 310 IAC 12-5-101(f) to add the requirement that flyrock shall not be cast beyond the permit boundary, the Director finds that the changes satisfactorily address the required amendment, since the boundary of the bonded area will always fall within the permit area. Therefore, the Director finds the Indiana requirements no less effective than the Federal requirements.

Indiana has amended 310 IAC 12-5-36(h)(1) and 310 IAC 12-5-101(h)(1) to delete the word "active" from the phrase "active underground mines" as required by 30 CFR 914.16(b)(2), so that the rule requires that any underground mine shall be protected from damage by the establishment of a maximum allowable limit on the ground vibration. Indiana has also added a sentence to each of these paragraphs to read: "Provided, however, abandoned underground workings which are within the permit boundary and which are to be mined through according to approved mining plans are not subject to a ground vibration limitation." Although OSMRE specifically required Indiana to remove the word "active" in order that inactive (abandoned) underground mines would be protected as well as active mines, the Director finds that the exception provided by the additional sentence in the Indiana rules does not render the rule less effective than 30 CFR 816.67(d). The Indiana rule protects active and inactive underground mines with only the exception that if an inactive underground mine is being mined through, there may necessarily be damage to the mine from blasting in the course of mining through the underground workings. The Director finds this exception does not render the rule less effective than the Federal rule, and that the requirement in 30 CFR 914.16(b)(2) is satisfactorily addressed.

Indiana has made various minor editorial changes to 310 IAC 12-5-36 and 12-5-101 which the Director finds do not alter the substance of the rules.

IV. Public Comments

Comments on the proposed amendments were received from

representatives of Peabody Coal Company and Old Ben Coal Company. Comments were generally supportive of the amendments.

The representative of Peabody Coal Company stated that the Secretary had no discretion to disapprove the civil penalty regulations, because a State cannot be required to use a point system and therefore a State can choose to use a point system that is not identical to that in 30 CFR Part 845, "as long as that point system is fairly and uniformly applied as reflected in oversight." The commenter stated that OSMRE's annual evaluation reports on the Indiana program implementation have discussed the assessment of civil penalties and that none of the reports noted deficiencies in the system itself. The commenter attached copies of the relevant portions of the reports to support this statement. The commenter then reiterated that the Secretary should approve Indiana's civil penalty amendment.

The representative from Old Ben Coal Company also supported the civil penalty amendment and said that the rules were consistent with SMCRA and the pertinent article of the Indiana Code. The commenter said the changes will provide operator flexibility while maintaining regulatory control and that paperwork and confusion will be decreased.

The Director agrees with the commenters to the extent that he has found the amended rules to be consistent with Federal requirements and has approved the amendment.

The Peabody Coal Company representative discussed the background of the incidental boundary rule revisions and said that OSMRE's concerns with previous preliminary submissions of the amendment had been addressed in this submission. The commenter said that the amendment should now be approved. The representative from Old Ben Coal Company generally supported the amendment.

The Director agrees with the commenters and has approved the amendment.

The Peabody commenter had no comment on the rule changes concerning use of explosives; the commenter from Old Ben Coal Company supported the amendments. The Director has found that the amendments satisfactorily address the requirements in 30 CFR 914.16(b).

V. Director's Decision

The Director, based on the above findings, is approving the Indiana regulatory amendments as submitted on

January 31, 1986, under the provisions of 30 CFR 732.17. The Federal rules at 30 CFR Part 914 are being amended to implement this decision.

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, 1982, 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, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

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

List of Subjects in 30 CFR Part 914

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

Dated: May 7, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 914—INDIANA

30 CFR Part 914 is amended as follows:

1. The authority citation for Part 914 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 914.15 is amended by adding new paragraph (m) as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(m) The following amendments submitted by the Indiana Department of Natural Resources to OSMRE on

January 31, 1986, are approved effective May 13, 1986: amendments to the Indiana regulations at 310 IAC 12-6-11, 310 IAC 12-6-12, 310 IAC 12-6-12.5, 310 IAC 12-3-121, 310 IAC 12-5-34, 310 IAC 12-5-36, 310 IAC 12-5-100 and 310 IAC 12-5-101.

3. 30 CFR 914.16 is amended by removing and reserving paragraph (b) and removing paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) as follows:

§ 914.16 [Amended]

(b) [Reserved]

[FR Doc. 86-10699 Filed 5-12-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 360

[DoD Directive 5105.40]

Defense Mapping Agency (DMA)
Charter

ACTION: Final Rule.

SUMMARY: This part requires revision to: Reflect the assignment of responsibility for supervision of the Defense Mapping Agency and oversight of DoD MC&G programs to the ASD (C3I) and incorporate statutory and DoD Directive changes pertinent to DMA which have taken place since the subject part was last published in 1978 (48 FR 56895).

EFFECTIVE DATE: April 23, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Becker, Office of the Assistant Secretary of Defense (Comptroller), telephone: 697-0709.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 360

Organization and functions (Government Agencies).

Accordingly, 32 CFR Part 360 is revised to read as follows:

PART 360—DEFENSE MAPPING AGENCY

Sec.

- 360.1 Reissuance and purpose.
- 360.2 Mission.
- 360.3 Organization and management.
- 360.4 Responsibilities and function.
- 360.5 Relationships.
- 360.6 Authority.
- 360.7 Administration.
- 360.8 Delegations of Authority.

Authority: 10 U.S.C. Chapter 4.

§ 360.1 Reissuance and purpose.

Under the authority vested in the Secretary of Defense by Title 10, United States Code, this part reissues 32 CFR Part 360 to update the responsibilities, functions, relationships, and authorities of the Defense Mapping Agency (DMA).

§ 360.2 Mission.

DMA shall provide support to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components") on matters concerning mapping, charting, and geodesy (MC&G).

§ 360.3 Organization and management.

DMA is established as a separate agency of the Department of Defense under the direction, authority, and control of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) (ASD(C31)). It shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

§ 360.4 Responsibilities and Functions.

- (a) The *Director, DMA*, shall:
- (1) Organize, direct, and manage the DMA and all assigned resources.
 - (2) Serve as Program Manager and coordinator of all DoD MC&G resources and activities, to include reviewing the execution of all DoD plans, programs, and policies for MC&G activities not assigned to DMA.
 - (3) Provide staff advice and assistance on MC&G matters to the OSD, the OJCS, the Military Departments, other DoD Components, and other Government agencies, as appropriate.
 - (4) Develop MC&G guidance for the Department of Defense; review Military Department program and fiscal documents related to MC&G matters; and recommend appropriate actions to the Secretary of Defense.
 - (5) In support of the OJCS, review the MC&G requirements and priorities of the DoD Components and other Government agencies, and develop a consolidated statement of MC&G requirements and priorities.

(6) Ensure responsive support to the MC&G requirements of the Military Departments and the Unified and Specified Commands.

(7) Establish policies and provide DoD participation in national and international MC&G activities, in coordination with the Assistant Secretary of Defense (International

Security Affairs) and the Assistant Secretary of Defense (International Security Policy), and execute DoD responsibilities under interagency and international MC&G agreements.

(8) Establish and/or consolidate DoD MC&G data collection requirements and provide them to the ASD(C3I), who shall verify and set priorities for such requirements; and collect or task other DoD Components to collect and provide necessary data.

(9) Establish DoD MC&G Research, Development, Test, and Evaluation (RDT&E) requirements, in coordination with the ASD(C3I), and task other DoD Components or private contractors to accomplish such requirements.

(10) Carry out the statutory responsibilities assigned to the Department of Defense under Chapter 167 of 10 U.S.C. for providing nautical charts and marine navigation data for the use of all vessels of the United States and navigators generally, and the responsibilities assigned under Chapter 13 of 44 U.S.C. for the printing of notices to mariners and other publications.

(b) The *Secretaries of the Military Departments* and the *Commanders of Unified and Specified Commands* shall:

- (1) Develop and submit to DMA their MC&G requirements and priorities.
- (2) Provide support, within their respective fields of responsibilities, to the Director, DMA, as required to carry out the assigned mission of the Agency.
- (3) Assess the responsiveness of the DMA to their operational needs.

(c) The *Joint Chiefs of Staff (JCS)* shall:

- (1) Advise the Secretary of Defense on MC&G requirements and priorities.
- (2) Provide guidance to the DMA and the Unified and Specified Commands that will serve as the basis for interrelationships between these organizations.
- (3) Obtain the advice and recommendations from the Director, DMA, on matters within the areas of responsibility assigned to the DMA.

§ 360.5 Relationships.

(a) In performing assigned functions, the Director, DMA, shall:

- (1) Be responsible to the JCS for operational matters within their cognizance, as well as requirements associated with the Joint Planning process. For these purposes, the Chairman of the JCS is authorized to task and communicate with the DMA directly.
- (2) Maintain appropriate liaison with other DoD Components and other agencies of the Executive Branch for the exchange of information on programs

and activities in the field of assigned responsibilities.

(3) Make use of established facilities and services in the Department of Defense or other governmental agencies whenever practicable to achieve maximum efficiency and economy.

(4) Ensure that appropriate staff elements of the OSD, the OJCS, the Military Departments, and other DoD Components are kept fully informed concerning DMA activities with which they have substantive concern.

(b) The Secretaries of the Military Departments and Heads of other DoD Components shall:

(1) Provide assistance within their respective fields of responsibility to the Director, DMA, in carrying out the responsibilities and functions assigned to the DMA.

(2) Coordinate with the Director, DMA, on all programs and activities that include or are related to MC&G.

§ 360.6 Authority.

The Director, DMA, is specifically delegated authority to:

(a) Task DoD Components directly to accomplish the MC&G RDT&E and data collection requirements established by DMA and verified by the ASD(C3I).

(b) Have free and direct access to, and direct communications with, all elements of the Department of Defense and other executive departments and agencies, as necessary to carry out DMA functions and responsibilities.

(c) Obtain such reports and information, consistent with the policies and criteria of DoD Directive 5000.19,¹ and advice and assistance from other DoD Components as necessary to carry out DMA functions and responsibilities.

(d) Establish facilities necessary to accomplish the DMA mission in the most efficient and economical manner.

(e) Exercise the administrative authorities contained in § 360.8.

§ 360.7 Administration.

(a) The Director, DMA, shall be a commissioned officer of suitable general or flag rank appointed by the Secretary of Defense from officers of the Armed Forces on active duty.

(b) The Deputy Director shall be selected by the ASD(C3I). When the Deputy Director is a military officer, selection shall be based on the recommendation of the JCS.

(c) DMA shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(d) The Military Departments shall assign military personnel to DMA in accordance with approved authorizations and procedures for assignment to joint duty. The JCS shall review and provide recommendations on the DMA joint manpower program to the ASD(C3I), as appropriate, for those functions where DMA is responsive to the JCS.

§ 360.8 Delegations of authority.

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, DMA, or in the absence of the Director, the person acting for the Director, is hereby delegated authority as required in the administration and operation of DMA to:

(a) Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b), and 3101 pertaining to the employment, direction, and general administration of DMA civilian personnel.

(b) Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Coordinated Federal Wage System. In fixing such rates, the Director, DMA shall follow the wage schedule established by the DoD Wage Fixing Authority.

(c) Establish advisory committees and employ part-time advisers, as approved by the Secretary of Defense, for the performance of DMA functions pursuant to the provisions of 10 U.S.C. 173, 5 U.S.C. 3109(b), and the agreement between the Department of Defense and the Civil Service Commission on employment of experts and consultants, dated March 14, 1975.

(d) Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of DMA to perform this function.

(e) Establish a DMA Incentive Awards Board and pay cash awards to, and incur necessary expenses for the honorary recognition of civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect DMA or its subordinate activities, in accordance with the provisions of 5 U.S.C. 4503 and

applicable Office of Personnel Management (OPM) regulations.

(f) In accordance with the provisions of 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2², "DoD Personnel Security Program," December 20, 1979; as appropriate:

(1) Designate any position in DMA as a "sensitive" position.

(2) Authorize, in case of an emergency, the appointment of a person to a sensitive position in the Agency for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

(3) Authorize the suspension, but not terminate the services of an employee in the interest of national security in positions within DMA.

(4) Initiate investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned or detailed to, or employed by DMA. Any action to deny or revoke a security clearance will be taken in accordance with procedures prescribed in DoD 5200.2-R³, "DoD Personnel Security Program," December 1979.

(g) Act as agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, as amended; and, as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954, as amended, and section 205(p) (1) and (2) of the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)) with respect to DMA employees.

(h) Authorize and approve overtime work for DMA civilian officers and employees in accordance with the provisions of 5 U.S.C. Chapter 55, Subchapter V, and applicable OPM regulations.

(i) Authorize and approve:

(1) Travel for DMA civilian officers and employees in accordance with Joint Travel Regulations, Volume 2, "DoD Civilian Personnel."

(2) Temporary duty travel for military personnel assigned or detailed to DMA in accordance with Joint Travel Regulations, Volume 1, "Members of Uniformed Services."

(3) Invitational travel to persons serving without compensation whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly

¹ Copies may be obtained, if needed, from the Naval Publications and Forms Center, 5801 Tabor Avenue, Code 301, Philadelphia, PA 19120.

² See footnote 1 to § 360.6(e).

³ See footnote 1 to § 360.6(e).

related to, or in connection with DMA activities, pursuant to the provisions of 5 U.S.C. 5703.

(j) Approve the expenditure of funds available for travel by military personnel assigned or detailed to DMA for expenses incident to attendance at meetings of technical, scientific, professional or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by law (37 U.S.C. 412 and 5 U.S.C. 4110 and 4111). This authority cannot be redelegated.

(k) Develop, establish, and maintain an active and continuing Records Management Program, pursuant to the provisions of section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102).

(l) Establish and use imprest funds for making small purchases of material and services, other than personal, for DMA, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with the provisions of DoD Instruction 5100.71⁴, "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973.

(m) Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of DMA consistent with 44 U.S.C. 3702.

(n) Establish and maintain appropriate property accounts for DMA and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DMA property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(o) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DMA, pursuant to DoD Directive 5200.8⁵, "Security of Military Installations and Resources," July 29, 1980.

(p) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and

procedures prescribed in DoD Directive 5025.1⁶, "Department of Defense Directives System," October 16, 1980.

(q) Enter into support and service agreements with the Military Departments, other DoD Components, or other Government agencies, as required for the effective performance of DMA functions and responsibilities.

(r) Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration with respect to the disposal of surplus personal property.

(s) Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Government department or agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of DMA. To the extent that any law or Executive Order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

(t) Sell maps, charts, and related products to the public as governed by the provisions of OMB Circular A-25, "User Charges," and 10 U.S.C., Chapter 167, section 2794.

(u) Authorize the release of classified DoD MC&G products to foreign nationals within DoD disclosure policies.

(v) Lease property under the control of DMA, under terms that will promote the national defense or that will be in the public interest, pursuant to the provisions of 10 U.S.C., Chapter 159, section 2667.

(w) Execute section 8091 of Pub. L. 99-190 (The FY 1986 Department of Defense Appropriations Act), December 19, 1985, relating to international agreements.

The Director, DMA, may redelegate these authorities as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

These delegations of authority are effective April 23, 1986.

Dated: 8 May 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-10684 Filed 5-12-86; 8:45 am]

BILLING CODE 3810-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6711]

Flood Insurance: Suspension of Community Eligibility

AGENCY: Federal Emergency Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the *Federal Register*.

EFFECTIVE DATE: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT:

Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street, Southwest, FEMA—Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable floodplain management

⁴ See footnote 1 to § 360.6(e).

⁵ See footnote 1 to § 360.6(e).

⁶ See footnote 1 to § 360.6(e).

measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register**.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against

certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment

of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

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

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special flood hazard areas identified	Date ¹
Region I					
Massachusetts	Falmouth, town of, Barnstable County	255211F	July 23, 1971 Emerg.; May 18, 1973 Reg.; May 15, 1986 Susp.	May 18, 1973, July 1, 1974, Aug. 8, 1975, July 29, 1977, Sept. 30, 1977, Dec. 16, 1980, Oct. 1, 1983 and May 15, 1986.	May 15, 1986.
Do	Duxbury, town of, Plymouth County	250263B	Sept. 29, 1972 Emerg.; May 2, 1977 Reg.; May 15, 1986 Susp.	Aug. 30, 1974, May 2, 1977 and May 15, 1986.	Do.
Region III					
Pennsylvania	Fountain Hill, borough of, Lehigh County	421808A	July 31, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Nov. 12, 1974 and May 15, 1986	Do.
Do	Southampton, township of, Franklin County	421657B	June 17, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	May 31, 1974, Oct. 8, 1976 and May 15, 1986.	Do.
Do	Washington, township of, Snyder County	422041B	Mar. 11, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Jan. 17, 1975, Apr. 11, 1980 and May 15, 1986.	Do.
Region V					
Ohio	Dresden, village of, Muskingum County	390705A	Apr. 30, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Feb. 4, 1975 and May 15, 1986	Do.
Region VII					
Kansas	Wichita, city of, Sedgwick County	200328B	Mar. 24, 1972 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Dec. 27, 1974, Apr. 1, 1977 and May 15, 1986.	Do.
Missouri	Fulton, city of, Callaway County	290051C	July 19, 1976 Emerg.; June 15, 1983 Reg.; May 15, 1986 Susp.	May 17, 1974, Jan. 16, 1976 and May 15, 1986.	Do.
Region II—Minimal Conversions					
New York	Clifton, town of, St. Lawrence County	361173B	Oct. 28, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Nov. 29, 1974, Dec. 26, 1975 and May 15, 1986.	Do.
Region IV					
Florida	Jay, town of, Santa Rosa County	120339A	Jan. 13, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Oct. 10, 1975 and May 15, 1986	Do.
Do	Madison, city of, Madison County	120152B	Aug. 1, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Jan. 24, 1974, May 21, 1976 and May 15, 1986.	Do.
Georgia	Lyons, city of, Toombs County	130223B	June 2, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Dec. 6, 1974, Nov. 21, 1975 and May 15, 1986.	Do.
Kentucky	Boyle County, Unincorporated areas	210322B	July 20, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Aug. 19, 1977 and May 15, 1986	Do.
Do	Dover, city of, Mason County	210167B	Feb. 11, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Aug. 2, 1974, June 4, 1976 and May 15, 1986.	Do.
Do	Greensburg, city of, Green County	210086B	July 3, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Feb. 1, 1974, June 18, 1976 and May 15, 1986.	Do.
North Carolina	Aberdeen, town of, Moore County	370165B	May 14, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Nov. 10, 1973, July 2, 1976 and May 15, 1986.	Do.
South Carolina	Dillsboro, town of Jackson County	370136B	July 23, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Mar. 8, 1974, Oct. 15, 1976 and May 15, 1986.	Do.
Do	Jackson, town of, Aiken County	45005B	Apr. 12, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	May 17, 1974, Apr. 23, 1976 and May 15, 1986.	Do.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special flood hazard areas identified	Date ¹
Tennessee	Estill Spring, town of, Franklin County	470272B	July 17, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Feb. 1, 1974, Oct. 22, 1976 and May 15, 1986	Do.
Do.	Mason, city of, Tipton County	470191A	Oct. 1, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Oct. 1, 1976 and May 15, 1986	Do.
Wisconsin	Prairie Farm, village of Barron County	550015B	July 25, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Dec. 7, 1973, May 28, 1976 and May 15, 1986	Do.
Region VII					
Kansas	Galena, city of, Cherokee County	200047B	June 12, 1975 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	May 24, 1975, Oct. 24, 1975 and May 15, 1986	Do.
Missouri	Raymore, city, of Cass County	290070A	February 4, 1976 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Dec. 27, 1974 and May 15, 1986	Do.
Region VIII					
Montana	Fairview, town of, Richland County	300064B	Feb. 3, 1977 Emerg.; May 15, 1986 Reg.; May 15, 1986 Susp.	Aug. 16, 1974, May 14, 1976 and May 15, 1986	Do.

Code for reading 5th column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension.
¹Date certain Federal assistance no longer available in special flood hazard areas.

Harold T. Duryee,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 86-10680 Filed 5-12-86; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA-6713]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the

community, listed in the fourth column of the table.

Send comments to that address also.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood evaluation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or

show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the flood plain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

The authority citation for Part 65 continues to read as follows:

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

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona					
Maricopa	City of Peoria	Apr. 4, 1986, and Apr. 11, 1986, Peoria Times.	The Honorable Edmund Pang, Mayor, City of Peoria, P.O. Box 38, Peoria, AZ 85345.	Mar. 24, 1986	040050
Pima		Apr. 9, 1986, and Apr. 16, 1986 Arizona Daily Star.	The Honorable Sam Lena, Chairman, Pima County Board of Supervisors, 131 West Congress, Tucson, AZ 85701.	Mar. 19, 1986	040073

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
South Dakota: Lawrence	City of Spearfish	Jan. 23, 1986, Jan. 24, 1986, <i>Queen City Mail</i> .	The Honorable Wilbur Trethewey Mayor, City of Spearfish, 722 Main Street, Spearfish, SD 57783.	Dec. 24, 1985	460046 C
Texas: Dallas	City of Irving	Apr. 9, 1986, Apr. 16, 1986, <i>Irving Daily News</i> .	The Honorable Bobby Joe Raper, Mayor of the City of Irving, Dallas County, P.O., Box 2288 Irving, TX 75061.	Mar. 28, 1986	480180

Issued: April 23, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-10675 Filed 5-12-86; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; New Jersey et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

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

SUPPLEMENTARY INFORMATION:

The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the *Federal Register* for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the

community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

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

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

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
NEW JERSEY	
Waldwick (Borough), Bergen County (FEMA Docket No. 6538)	
Hohokus Brook: Downstream corporate limits	*187
NEW YORK	
Canastota (Village), Madison County (FEMA Docket No. 6692)	
Canastota Creek: Approximately 950' upstream of the confluence with Cowaselon Creek	*393
Approximately 300' upstream of NYS Thruway	*399
Approximately 150' downstream of the upstream corporate limits	*460
Chivilite Creek: Approximately 1,525' upstream of the confluence with Cowaselon Creek	*392
Approximately 400' upstream of NYS Thruway	*399
Upstream side of New Boston Street	*401
Maps available for inspection at the Village Hall, 205 South Peterboro Street, Canastota, New York.	
PENNSYLVANIA	
Logan (Township), Blair County (FEMA Docket No. 6699)	
Mill Run: At downstream corporate limits	*1,052
Upstream side of Logan Mall Access Road	*1,054
Upstream side of Union Avenue (downstream crossing)	*1,078
Approximately 2,000 feet upstream of Union Avenue (downstream crossing)	*1,086
Approximately 3,900 feet upstream of Union Avenue (downstream crossing)	*1,103
Approximately 350 feet downstream of CONRAIL	*1,193
Upstream side of CONRAIL (upstream crossing)	*1,204
Approximately 600 feet upstream of CONRAIL (upstream crossing)	*1,208
Approximately 2,000 feet downstream of Mill Run Road	*1,237
Approximately 500 feet downstream of Mill Run Road	*1,261
Upstream side of Mill Run Road	*1,275
Maps are available for inspection at the Logan Township Municipal Building, 800 39th Street, Altoona, Pennsylvania.	
Tionesta (Township), Forest County (FEMA Docket No. 6692)	
Allegheny River: Downstream corporate limits	*1,041
At confluence of Little Tionesta Creek	*1,046
Upstream side of upstream crossing of U.S. Route 62 bridge (second crossing)	*1,050
At upstream corporate limits	*1,061

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Maps available for inspection at R.D. 1, Box 20, c/o Eugene Wagoner, Tionesta, Pennsylvania.

Issued: April 23, 1986.

Jeffrey S. Bragg,
Administrator, Federal Insurance
Administration.

[FR Doc. 86-10672 Filed 5-12-86; 8:45 am]
BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 60585-6085]

Shrimp Fishery of the Gulf of Mexico

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

ACTION: Emergency interim rule.

SUMMARY: NOAA issues an emergency interim rule amending the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico. The rule modifies the geographic boundary and dates of the seasonal closure to shrimp trawling off Texas to reduce the area closed to trawl fishing to that portion of the fishery conservation zone (FCZ) within 15 nautical miles of the baseline for the territorial sea (shore). The intended effect of this action is to support the closure of the State of Texas and to alleviate economic stress on the shrimping industry by enabling fishermen to harvest marketable-size shrimp from an area that would otherwise be closed.

EFFECTIVE DATES: May 10, 1986, through July 9, 1986, except for § 658.5(c). In § 658.25, paragraph (a) is suspended from May 10, 1986, through July 9, 1986. In § 658.25, a new paragraph (c) is added to be effective from 30 minutes after sunset May 10, 1986, through 30 minutes after sunset July 9, 1986. This rule is being issued prior to approval by the Office of Management and Budget (OMB) of the information collection requirements in § 659.5(c). When OMB approval is received, a notice will be published in the **Federal Register** making this section effective.

ADDRESS: Copies of documents supporting this action may be obtained from and comments on this action may be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries

Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT:
Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) was prepared by the Gulf of Mexico Fishery Management Council (Council) and was approved by the Assistant Administrator for Fisheries, NOAA, on November 7, 1980, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Final regulations implementing the FMP were effective May 20, 1981 (48 FR 24789). The Council prepared an FMP amendment that provides for modification of the closed area, identified in 50 CFR 658.24 as the Texas Closure. The FMP amendment was approved on December 28, 1981. A notice of availability and a request for comments on the amendment were published on January 28, 1982 (47 FR 4104). No written comments were received on the FMP amendment during the public comment period which ended on March 13, 1982.

The amended FMP and current regulations provide that the duration of the closure to shrimping in the FCZ off Texas not exceed 60 days, nor be less than 45 days, in order to delay harvest of small, juvenile brown shrimp until they reach a larger size, thus producing more pounds of more valuable shrimp. The growth cycle of brown shrimp shows that small shrimp stay in coastal estuaries until they reach a small adult size, at which time they move through the coastal passes to the deeper waters of the Gulf of Mexico, usually beginning in late May or early June of each year.

Justification

Economic conditions in the coastal areas of Texas and the western Gulf of Mexico have deteriorated significantly in the last year with a concomitant decrease in employment opportunity, which has directly affected the viability of the shrimping industry.

Information available to NMFS shows that harvestable size shrimp are available offshore during the closure period while the majority of small shrimp are located inshore. An opening of the FCZ beyond 15 miles from the shore (FCZ baseline) would allow the harvest of an estimated 643,000 pounds of large shrimp valued at about \$1.8

million during the closure period of 45-60 days. Shrimp fishermen would have the opportunity to fish throughout the year in the non-closure portion of the FCZ off Texas.

Emergency regulations are being implemented to adjust the closure dates and to close only that portion of the FCZ within 15 miles of the Texas coast in 1986, for the 45-60 day closure period usually scheduled in June and July, to alleviate the severe economic impact associated with the loss of shrimp fishing days imposed upon fishermen and processors by the complete closure of the FCZ.

Endangered Species Act

Section 7 Consultation—Biological Opinion

On March 27, 1986, the Council provided NMFS, Southeast Region, with a letter concluding that the proposed modification of the FCZ Texas closure would have no effect on threatened and endangered species under the jurisdiction of NMFS. The species considered included five endangered whales: (1) The sperm (*Physeter catodon*), (2) fin (*Balaenoptera physalus*), (3) sei (*Balaenoptera borealis*), (4) humpback (*Megaptera novaeangliae*), and (5) right (*Eubalaena glacialis*). In addition, five endangered or threatened species of sea turtles were addressed: (1) The Kemp's ridley (*Lepidochelys kempi*), (2) loggerhead (*Caretta caretta*), (3) green (*Chelonia mydas*), (4) hawksbill (*Eretmochelys imbricata*), and (5) leatherback (*Dermostichelys coriacea*). NMFS does not concur with the Council's "no effect" determination for endangered and threatened sea turtles. NMFS has determined that the proposed modification/partial elimination of the FCZ closure off Texas may adversely affect sea turtles. Pursuant to Section 7 of the Endangered Species Act (ESA), NMFS initiated formal consultation and prepared a Biological Opinion.

A Section 7 consultation on the Shrimp FMP was previously conducted in 1980 with the Council. It resulted in a May 8, 1980, Biological Opinion (BO) which determined that the management actions to be implemented through the Shrimp FMP were not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. The BO was based on an evaluation of the Shrimp FMP, the

Environmental Impact Statement (EIS) for the FMP, and the available data at that time. One of the management measures considered in the Shrimp FMP was the closure of the entire FCZ off Texas to shrimping from June 1 to July 15 (closing and opening date are flexible by 15 days). This FCZ closure is complementary to Texas' seasonal closure of its 9-mile territorial sea which has occurred for 45 to 60 days each year since 1959. The management objective of the Texas closure regulation (as specified in the FMP which was implemented in 1981) were to increase the yield of shrimp and eliminate the waste of undersized shrimp caught during the period in their life cycle when they are growing rapidly.

The EIS for the Shrimp FMP states that "sea turtles will benefit from increased protection afforded by the establishment of a 45-day closure to trawling in the FCZ off Texas." The EIS further states that the closure period occurs during a period when sea turtles are relatively abundant in Texas offshore waters. Therefore, NMFS believes that the proposed emergency rule to partially open this FCZ area may (or coincidentally) result in an increase in adverse impacts to sea turtles. The 1980 NMFS Biological Opinion for the Shrimp FMP resulted in a "no jeopardy" decision; however, it concluded that formal consultation should be reinitiated if the FMP were modified or new information revealed effects of the action that may affect listed species or critical habitat in a manner not considered in the BO.

The new Biological Opinion responds to the Gulf Council's March 27, 1986, letter and their recommendation to modify the existing FCZ closure off Texas. It is based on the best scientific and commercial data available and incorporates information from: (1) The 1980 Biological Opinion, (2) the Shrimp FMP, (3) the proposed emergency rule, (4) the scientific literature, and (5) other pertinent and available information.

Biological Opinion Summary

Section 7(b)(4) of the ESA requires that when a proposed agency action is found to be consistent with section 7(a)(2) of the Act and the proposed action is likely to take individuals of a listed species incidental to the action, the NMFS will issue a statement that specifies the impact (amount or extent) of such incidental taking. It also states that reasonable and prudent measures be provided that are necessary to minimize such impacts. The statement must also set forth the terms and conditions that must be complied with to implement those measures.

As required under section 7(b)(4) of the ESA, the NMFS sets the following incidental take levels for endangered and threatened species: Twenty (20) Kemp's ridleys and eighty (80) loggerheads. All takes are not anticipated to result in mortalities, as mortality may be dependent upon the amount of time of a trawl tow. The reasonable and prudent measures that the NMFS believes are necessary and appropriate to minimize the impact of incidental takings include two measures that have been proven to effectively reduce taking and/or mortalities of turtles in shrimp trawls. These are: (1) Utilization of the TED (Trawling Efficiency Device) and (2) reduction in the amount of time of the trawl tow. Implementation of either measure will reduce the impacts of incidental take. The TED can reduce turtle captures by as much as 97 percent while maintaining shrimp catches equal to standard rigged trawls. Reduced trawl times significantly reduce sea turtle drownings. Therefore, the following terms and conditions are established to implement the reasonable and prudent measures and to document the incidental take levels of sea turtles by shrimpers operating as a result of the proposed FCZ Texas closure modification. An option is given in the terms and conditions because the proposed action may occur as soon as May 10 and TEDs may not be available to all vessels:

1. Shrimp nets shall be equipped with TEDs; or
2. Trawl tow times shall not exceed 90 minutes (maximum per net).

When turtles are encountered, a report giving the date of take and an account of the status of each turtle must be provided to NMES, upon return to port following each fishing trip. Every effort must be made to return the turtles to the sea alive, with as little harm as possible. NMFS will supply the shrimp vessel operators with reporting forms, sea turtle identification guides, and resuscitation techniques upon request. Reporting forms must be returned to Laboratory Director, NMFS, Galveston Laboratory, 4700 Avenue U, Galveston, Texas 77550.

If the incidental take meets or exceeds the specified levels for Kemp's ridleys or loggerheads, then NMFS will reinitiate consultation. The NMFS Southeast Regional Office will cooperate with the Council and the shrimp industry in the review of the incident(s) to determine the need for developing additional mitigation measures.

Classification

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

The Assistant Administrator also finds for good cause (i.e., to alleviate severe economic impacts associated with the loss of shrimp fishing days in a timely fashion) that the reasons justifying promulgation of these rules on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of section 553(b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program. Texas, the only State involved, does not have an approved coastal zone management program.

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

The Assistant Administrator prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available for the "ADDRESS" listed above.

The rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the PRA. Comments should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comments.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 8, 1986.

William G. Gordon,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For reasons set forth in the preamble,
50 CFR Part 658 is amended as follows:

**PART 658—SHRIMP FISHERY OF THE
GULF OF MEXICO**

1. The authority citation for Part 658
continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 658.1 is amended by adding
a new paragraph (d) to read as follows:

§ 658.1 Purpose and scope.

(d) Regulations governing the taking of
endangered and threatened marine
mammals and sea turtles appear in 50
CFR Parts 222 and 227.

3. Section 658.2 is amended by adding
the definitions of *Endangered and
threatened marine mammals and sea
turtles* and *Trawling efficiency device*
(TED) in alphabetical order as follows:

§ 658.2 Definitions.

*Endangered and threatened marine
mammals and sea turtles* means five
whale species (sperm, fin, sei,
humpback, and right) and five sea turtle
species (Kemp's ridley, loggerhead,
green, hawksbill, and leatherback).

Trawling efficiency device (TED)
means a device installed in the rear of a
trawl net just before the cod end that
reduces the catch of sea turtles and

finfish bycatch, while not reducing
shrimp catch.

4. In § 658.5, a new paragraph (c) is
added to read as follows:

§ 658.5 Reporting requirements.

(c) *Texas closure.* The owner or
operator of any fishing vessel that fishes
for, or lands, shrimp or any part thereof
in the area described at § 658.7(n) during
the time of the Texas closure described
at § 658.25(c), and who incidentally
takes any endangered or threatened sea
turtle, must provide the following
information regarding any fishing trip to
the Center Director or his designee
within 24 hours after landing:

- (1) Date;
- (2) Shrimp vessel name;
- (3) Species of turtle caught;
 - (i) Loggerhead;
 - (ii) Kemp's ridley; or
 - (iii) Other (specify, see turtle I.D.
guide).
- (4) Status of turtle when released;
 - (i) Alive; or
 - (ii) Dead.
- (5) Did the turtle have a tag?
- (6) If so, what is the tag number?
- (7) Coordinates of capture (loran
coordinate or latitude and longitude);
- (8) Approximate tow time; and
- (9) Additional comments.

5. In § 658.7 a new paragraph (n) is
added to read as follows:

§ 658.7 Prohibitions.

(n) During the time period of the
Texas closure described at § 658.25(c),

and within the area described in this
paragraph, it is unlawful for any vessel
to trawl for a time period that exceeds
90 minutes in duration, beginning when
the trawl net enters the water and
ending when the trawl net is pulled from
the water, unless each such trawl net is
fitted with a trawl efficiency device
(TED), in which case there is no time
limit restriction on individual trawl
tows. The area is that part of the FCZ
outside 15 nautical miles of the baseline
for the territorial sea (shore) off the
State of Texas west of a line connecting
point A (29°32.1' N. latitude, 93°7' W
longitude) to point B (26°11.4' N latitude,
92°53' W. longitude) (see Figure 3).

6. Section 658.25 is amended from
May 10, 1986, through July 9, 1986, by
suspending existing paragraph (a) from
May 10, 1986, through July 9, 1986, and
adding a new paragraph (c) to be
effective from May 10, 1986, through July
9, 1986, to read as follows:

§ 658.25 Texas closure.

(c) *Area and season restrictions.* From
30 minutes after sunset May 10, 1986,
through 30 minutes after sunset July 9,
1986, the area described in this
paragraph is closed to all fishing for
shrimp. The area is that part of the FCZ
within 15 nautical miles of the baseline
for the territorial sea (shore) off the
State of Texas west of a line connecting
point A (29°32.1' N. latitude, 93°7' W.
longitude) and point B (26°11.4' N.
latitude, 92°53' W. longitude) (see Figure
3).

[FR Doc. 86-10712 Filed 5-12-86; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 51, No. 92

Tuesday, May 13, 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.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 303

[Docket No. 44015; Notice No. 86-3]

Exemption From Prior Approval Requirements for Certain Transactions

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation is proposing to amend the current aviation merger procedural regulations to reduce regulatory obstacles to air carrier acquisitions of other air carriers. The first amendment would allow air carriers to seek an exemption from the prior approval requirement of section 408 of the Federal Aviation Act, under expedited procedures, to permit an air carrier to acquire another air carrier and exercise control over it pending consideration of an application for approval. In particular, the exemption would be available where the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, has decided not to oppose the transaction. In addition, the Department is proposing to exempt air carriers from the provisions of section 408 to permit one air carrier to hold the voting securities of another air carrier in a voting trust, subject to certain conditions, without obtaining Department approval of the trust.

DATES: Comments may be submitted on or before June 12, 1986.

ADDRESSES: Comments may be submitted in triplicate to Docket 44015, 400 Seventh Street SW., Room 4107, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: George Baranko, Office of the Assistant General Counsel for International Law at (202) 472-5621 or Samuel E. Whitehorn, Office of the Assistant General Counsel for Regulation and Enforcement at (202) 472-5577, or Robert S. Goldner, Office of the Assistant

Secretary for Policy and International Affairs at (202) 426-2912, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of \$100 million or more. There will be no increases in production costs or prices for consumers, individual industries, Federal, State and local governments, agencies, or geographic regions. Furthermore, this proposed rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These proposed regulations would allow certain transactions to go forward, pending regulatory review, and rely upon procedures employed in unregulated industries to enforce certain laws. The proposed regulatory procedures will be more efficient and the extent of regulation will be reduced by these rules. Accordingly, a regulatory impact analysis is not required.

The proposed regulations are not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, since they are primarily procedural in nature and do not affect the Department's ability to review the merits of transactions subject to section 408. Their economic impact should be minimal and a full regulatory evaluation is not required.

I certify that these rules will not have a significant economic impact on a substantial number of small entities, since most, if not all such entities, have been exempted from section 408 procedures by regulations adopted July 31, 1985 (50 FR 31134). Moreover, any impact would be positive.

These proposed regulations do not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. The relevant collection of information requirements will be submitted to the Office of Information and Regulatory Affairs of the Office of Management and

Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the proposed information collection requirements may be sent to the DOT Desk Officer, OIRA, OMB, NEOB, Washington, DC. A copy should also be forwarded to the DOT docket for this rulemaking.

Background

On January 1, 1985, jurisdiction over airline mergers, acquisitions, and consolidations under section 408 of the Federal Aviation Act of 1958 (Act), 49 U.S.C. 1378, was transferred from the Civil Aeronautics Board (Board) to the Department of Transportation (Pub. L. 98-443, October 4, 1984). On July 31, 1985, the Department adopted new procedural regulations governing mergers and intercarrier agreements, 14 CFR Part 303 (50 FR 31134). Part 303 also exempts from Department review all mergers, acquisitions and consolidations except those involving two or more air carriers that operate large aircraft (60 seats or more) in passenger service. The parties to the latter types of transactions must receive Departmental approval before they may go forward.

Currently, unless exempt, no air carrier may obtain control of another air carrier without first obtaining the approval of the Department. Pursuant to section 408(f), 49 U.S.C. 1378(f), ownership of 10 percent or more of the stock of an air carrier is presumed to constitute "control" for purpose of section 408. While the Department is reviewing the proposed acquisition of control, a process that may take up to six months (see section 1010 of the Act, 49 U.S.C. 1490), the acquiring carrier may not exert control over the other company. If the transaction is one requiring Presidential review under section 801 of the Act, 49 U.S.C. 1461, the regulatory process may be extended for the two more months.

Consistent with policies adopted by the Board, the Department has approved voting trust agreements that allow carriers to purchase more than ten percent of a target carrier's stock pending completion of the regulatory process. See e.g., Orders 85-10-78; 85-10-9; and 85-8-16. However, voting trusts permit the acquiring company to exercise only limited control of the target company. This is true regardless of whether the transaction raises significant competitive or public interest

issues. Moreover, the acquiring carrier must obtain approval of a voting trust, a process that may take two to three weeks, since the Department must consider, *inter alia*, the comments of interested parties.

The Department's processes are generally far more time consuming and burdensome on business prerogatives than those faced by firms in other industries. In other industries, the primary procedural obstacle to acquisitions or consolidations is the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. 18a. Hart-Scott-Rodino provides that one firm cannot acquire 15 percent or more of another firm's voting securities (or acquire assets valued in excess of \$15 million) while the Federal Trade Commission (FTC) or the Assistant Attorney General for Antitrust determines whether or not to challenge the transaction under the antitrust laws. The statute affords the FTC or the Assistant Attorney General 15 days to consider the effects of a cash tender offer. This period may be extended if the reviewing agency concludes that additional information is required. For cash tender offers, the waiting period may be extended until 10 days after compliance with a request for additional information. The waiting period for other transactions is 30 days, which period may be extended until 20 days after compliance with any additional information directive.

Hart-Scott-Rodino does not permit the FTC or the Assistant Attorney General to hold up acquisitions or consolidations indefinitely. If either agency decides to challenge the transaction, the statute provides that they may seek to have the transaction enjoined in District Court. Once the waiting period has expired, if no preliminary injunction has been entered, the parties may proceed.

Hart-Scott-Rodino does not appear to constitute a significant impediment to corporate acquisitions in the vast majority of cases. In 1984, approximately 60 percent of the filings under that Act resulted in "early termination letters" and 94 percent were reviewed without time extensions for collection of additional information. Federal Trade Commission, Eighth Annual Report to Congress pursuant to section 201 of the Hart-Scott-Rodino Antitrust Improvements Act, Appendix A (September 18, 1985).

We believe that Air carrier acquisitions of other air carriers should be subject to far more difficult and protracted processes than acquisitions in other industries. Rather, consistent with the policies expressed in the Airline Deregulation Act of 1978 (Pub. L.

95-504), the procedures faced by air carriers seeking to acquire other air carriers should be made as similar as possible to those that exist in unregulated industries. Specifically, delays created by the regulatory review process should be reduced and the process should be made more comparable to that applied in unregulated industries under the Hart-Scott-Rodino review process. This is particularly true in light of the fact that the Department of Justice will assume jurisdiction over air carrier acquisitions, mergers, and consolidations on January 1, 1989, following the sunset of section 408. See 49 U.S.C 1551 (a)(7). We are proposing two amendments in furtherance of this objective.

Exemption from the Prior Approval Requirement for Transactions the Assistant Attorney General Will Not Oppose

We are proposing, first, to exempt air carriers from the prior approval requirement of section 408 of the Act to allow them to go forward with certain transactions pending completion of the regulatory review process. A complete or partial exemption from the prior approval requirement of the Act may be granted.

The proposed amendment provides, in essence, for an initial assessment of the consequences of a transaction early in the section 408 process. Where transactions do not appear to raise substantial competitive or public interest issues, the Department would allow them to proceed pending regulatory review. In order to obtain an exemption under the expedited procedures provided for in this proposed rule, applicants would submit the transaction to the Department of Justice, under procedures comparable to those required under the Hart-Scott-Rodino review process (as if that section applied). In a case where the Assistant Attorney General for the Antitrust Division has indicated that he or she would not oppose the transaction, or would not oppose the transaction if certain conditions were imposed, an application seeking an exemption from the prior approval requirements of the Act would be filed with the Department of Transportation. A full and complete section 408 application must accompany the exemption application or have been previously filed. The exemption request would be processed under the following expedited procedures. Answers to the exemption application would be due ten days after the application is filed. In general, the Department intends to issue its determination within seven days of the deadline for such answers.

In those cases where the Assistant Attorney General offers no objection to the transaction, an exemption will normally be granted unless an objector has demonstrated a high probability that the Department would ultimately disapprove the transaction on the merits and that irreparable harm would likely occur if the transaction is allowed to go forward without limitation. With a full exemption from that requirement, one air carrier could acquire the securities of another and/or assert operational control during the Department's review process. In addition, two air carriers could merge or consolidate their operations.

Objectors may also argue that a more limited exemption would be appropriate because of competitive or public interest concerns. Such objections should specifically state the manner in which they believe the exemption should be limited. The Department will consider these arguments even though the objectors may not be able to demonstrate a likelihood of success on the merits and irreparable harm. An exemption may be so limited when an objector raises serious competitive or public interest issues that are not so substantial as to require an absolute bar to any significant acquisition of control by one carrier over another. In such circumstances, the Department may, for example, impose a hold separate requirement that would allow one carrier to acquire the stock of another, but not assume operational control. In other circumstances, the Department may allow the assumption of operational control, but preclude a complete merger of their operations. In short, the Department retains the discretion to limit the exemption where circumstances require.

Where the Assistant Attorney General indicates his or her conditional approval of a transaction, any exemption granted by the Department will be no more expansive than that which is consistent with the Assistant Attorney General's position. In addition, the Chief Executive Officer or Chief Legal Officer of the acquiring company would be required to file a statement indicating the company's unqualified acceptance of the proposed conditions before the exemption would be granted. The unconditional acceptance of the conditions would preclude it, and the other party to the merger in a consensual transaction, from contesting the conditions before the Department. Moreover, the Department's review of the underlying transaction under section 408 and section 401(h), if applicable, would consider the competitive and

public interest impact of the transaction as so conditioned.

Regardless of the scope of the exemption, the ability of the carriers to consolidate their operations pending final approval will be limited if section 401(h) of the Act, 49 U.S.C. 1371(h), applies to the transaction. Section 401(h) requires Department approval of any transfer of international certificate authority from one air carrier to another. If that section applies, separate corporate existences would have to be maintained to the extent necessary for each carrier to continue to provide international service consistent with its certificate obligations pending section 401(h) review. International certificate authority could not be transferred from the acquired carrier to the acquiring carrier until DOT approval under section 401(h) and Presidential review under section 801 had occurred.

Any exemption granted under this proposal would not eliminate the Department's section 408 review of the transaction. A proceeding would be held to consider any arguments that the transaction should not be approved or that additional or different conditions are necessary. If the Department eventually were to disapprove the transaction or impose conditions the parties find unacceptable and they cancel the transaction, the applicants would have to satisfy the Department that the *status quo ante* had been restored. Failure to do so could lead to enforcement action under Title IX, section 408 or section 411 of the Act, 49 U.S.C. 1381.

The instant proposal has a number of benefits. First, the exemption would reduce regulatory obstacles to air carrier acquisitions of other air carriers. Second, the Department of Justice's views would take on more importance in airline mergers and acquisitions. We do not believe that it would be appropriate, at this time, to make DOJ's views determinative on whether the underlying transaction should be approved while the statutory responsibility for implementing section 408 lies with this Department. However, DOJ's views should be afforded great weight in the decision on whether the prior restraint created by the statute may be lifted without significant risk of harm to competition or the public interest. A third, similar benefit is that by inducing carriers to use Hart-Scott-Rodino-like procedures, the amendment would facilitate the transition to the time when the Department of Justice assumes jurisdiction over airline mergers, acquisitions and consolidations.

Parties remain free to seek an exemption from the prior approval

requirements of the Act at any time, as long as an application for approval of the underlying transaction is on file. However, if the Department of Justice's views on the transaction have not been obtained, the exemption would be considered under our normal exemption procedures and not the expedited procedures created by this proposal.

Exemptions for Voting Trust Agreements in Section 408 Transactions

The Department is also proposing to exempt air carriers from section 408 to the extent necessary to permit them to acquire the voting securities of another carrier, without obtaining prior Department approval, in certain circumstances.

Since the passage of the Airline Deregulation Act, air carrier parties to merger transactions have frequently used voting trust agreements as a means to acquire the stock of another air carrier pending review of the acquisition, merger or consolidation under section 408. Among other uses, the trust device gives the acquiring carrier the ability to attempt a hostile takeover of the target company. Such trusts seldom raise any prospect of harm to competition because the Board and the Department have attached conditions on the trust that allow the acquiring carrier to obtain only limited control of the other carrier. Nevertheless, because the Act creates a presumption of control when one air carrier acquires 10 percent or more of another air carrier's voting stock, air carriers using such trusts have been required to obtain approval under section 408.

For the most part, such voting trust agreements have been routinely approved, usually within three weeks after the filing of the application. In those cases where the acquiring carrier proposed to acquire no more than 25 percent of the target company's securities and all stock purchases were placed in the hands of an independent trustee obligated to vote the stock in the same proportion as other stock is voted, the CAB found that the voting trust agreement prevented the exercise of control over the target carrier. See Orders 78-10-100 and 78-12-173. We believe that continued *ad hoc* review of voting trust agreements with these limitations is unwarranted.

In addition, both the CAB and the Department have approved voting trust involving the acquisition of more than 25 percent of another air carrier's stock, particularly when the acquiring carrier is competing with other interested parties in the marketplace for the target company. Such trusts were approved, in significant measure, because section 408

requires air carriers to await regulatory approval of the transaction, while other potential buyers, not subject to section 408, are free to purchase securities of the target company during the period of delay. This resulted not only in an unfair burden on the acquiring carrier, but created a significant distortion of the market that normally governs transactions of this sort. Consequently, despite the fact that the right to purchase an unlimited amount of stock of another air carrier was found to constitute control within the meaning of the Act, even in a proportional voting trust, the Department concluded that as long as certain conditions were imposed the "control" would not be adverse to the public interest or have anticompetitive impacts. Therefore, the voting trusts were routinely approved to allow the acquiring carrier to compete in capital markets. See, e.g., Orders 85-10-78, 85-10-9 and 85-8-16.

Our experience with such requests leads us to conclude that some form of automatic approval process is appropriate for voting trusts, for no matter how quickly we act, the delay may impede a carrier's ability to compete in acquiring another air carrier with a firm not subject to our jurisdiction. Consequently, exempting air carriers from section 408 to the extent necessary to acquire the stock of another air carrier, pursuant to a voting trust arrangement meeting certain defined criteria, would be in the public interest.

We are proposing to allow carriers to exceed the 25 percent threshold upon the submission, by the Chief Legal Officer of the acquiring company, of an affidavit that the target company is the subject of a competing takeover bid. This proposal is based upon past decisions that allowed larger acquisitions of stock because the target company was the subject of competing takeover bids. However, the Department has allowed larger acquisitions of stock in other circumstances and different or additional bases for permitting carriers to exceed the 25 percent threshold may be appropriate. Parties are invited to comment on this issue.

In addition, the Department is requesting comment, generally, on the desirability of creating limits on the amount of stock that may be placed in voting trusts that receive prior approval while an application under section 408 is pending. On several occasions, the Department has approved individual voting trusts in excess of the 25 percent threshold, while allowing carriers to retain an amount less than 10 percent outside the trust. In two recent filings,

the Department of Justice has suggested that allowing one air carrier to acquire all, or a large portion, of the stock of another air carrier pending the review process may cause significant competitive harm, particularly when the carriers are parties to a friendly merger agreement. The Department could limit the potential for such effects by limiting the amount of stock that may be placed in approved voting trusts. Of course, such a curtailment of the use of voting trusts generally would have the effect of increasing the incentives for carriers to present their transaction to the Assistant Attorney General and gain the broader exemption for transactions that have been cleared under Hart-Scott-Rodino procedures.

Consistent with our previous decisions, we would also require that the acquiring carrier execute a voting trust agreement and file it with the Department prior to reaching or exceeding the ten percent threshold. Further, to obtain the exemption, the voting trust must provide for the voting of all shares held in trust in the same proportion as other shares are voted. The only exception to this proportional voting requirement is that the acquiring carrier would be allowed to direct the trustee to vote its shares in support of any merger or consolidation proposal to which it, or its affiliates or subsidiaries, would be a party, and vote in opposition to any contrary proposal. This exception would apply only to the actual merger or consolidation proposal (i.e., where the issue presented to the stockholders is to accept or reject a specific offer), and does not extend to other issues placed before the shareholders which might facilitate or inhibit a merger or consolidation.

However, we recognize that as the amount of stock held in trust increases, a proportional voting requirement becomes counterproductive. Sometime after a majority of the target carrier's stock has been acquired, the amount of stock outside the trust is so limited that relatively small shareholders will dictate the outcome of shareholder votes, or can frustrate action by refusing to vote. In fact, we do not expect this potential problem will be of much practical significance; since in a hostile takeover it is highly unlikely that the carrier seeking the takeover would be able to acquire so high a percentage of stock as to reach the levels where potential voting could have adverse consequences. Nevertheless, were such circumstances to arise, an acquiring carrier would be free to request that the proportional voting requirement be lifted. In addition, the voting trust

agreement may provide that the trustee provide reasonable notice of his or her intent to vote the trust shares proportionately to the acquiring carrier. This would allow the acquiring carrier the opportunity to petition the Department for modification of the trust agreement to permit it to direct the trustee's voting on a particular issue.

Where a carrier wishes to execute a voting trust agreement with a provision that would in any way be different than those described above, it must obtain the Department's approval of the agreement in its entirety before acquiring ten percent or more of another air carrier's stock. Similarly, where a carrier desires to modify an existing agreement to permit it to direct a trustee's vote on a particular issue, it must obtain our approval for the proposed modification. We would continue to consider any such applications on a case-by-case basis, with approval dependent upon the degree of control which the proposed modification would afford the acquiring carrier and the competitive impact, if any, of the proposal.

The Department also proposes to require that an independent trustee hold the trust shares and that the acquiring carrier have also submitted an application for approval of the underlying transaction under section 408. Of course, if the carrier decides not to pursue the transaction, or the Department disapproves it, the carrier would be required to promptly file a complete plan for the divestiture of the stock.

Until a rule is adopted on this NPRM, prior approval of all voting trust arrangements in air carrier merger and acquisition proceedings is required. Failure to obtain such prior approval will subject the carriers involved to possible enforcement action, regardless of whether the carrier believes that the voting trust in question complies with the Civil Aeronautic Board or Department precedent.

In light of the fact that we are making Hart-Scott-Rodino-type procedures available to the airline industry in our other proposed rule, we are also requesting comments on an alternative approach that would reconcile our voting trust precedent with that procedure. That could be accomplished by limiting to 15 percent the amount of stock that could be purchased before Department approval of a voting trust. Carriers would only be permitted to exceed 15 percent after consideration of the particular voting trust proposal and a preliminary assessment of the merits of the underlying transaction consistent

with the provisions of the other proposed rule.

List of Subjects in 14 CFR Part 303

Air carriers, Antitrust, Administrative practices and procedures, Reporting and recordkeeping requirements.

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: 49 U.S.C. Subtitle I, sections 1301, 1302, 1303, 1324, 1371, 1377, 1378, 1379, 1382, 1384, 1386, 1388, and 1551.

2. Part 303 is amended by adding new §§ 303.60 and 303.61 to subpart F to read as follows:

§ 303.60 Exemption From the Prior Approval Requirement for Transactions the Assistant Attorney General Will Not Oppose.

(a) Any air carrier may seek an exemption from Section 408 of the Act to the extent that that section requires prior approval of a transaction.

(b) The Department will normally grant a request for such an exemption if an application for approval of the underlying transaction is on file with the Department and:

(1) The air carrier or carriers seeking the exemption file, along with the application for an exemption under this section, a statement from the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, indicating that he or she does not oppose the transaction; or

(2) The air carrier or carriers file, along with the application for an exemption under this section, (i) a statement from the Assistant Attorney General indicating that he or she does not oppose the transaction if specified conditions are imposed, and (ii) a statement from either the Chief Executive Officer or Chief Legal Officer of the acquiring company that that company unconditionally accepts any such conditions.

(c) Any party objecting to such a request for an exemption shall submit such objection within 10 days of the filing of the request.

(d) The Department may condition the exemption as it deems appropriate based on the comments received.

(e) An exemption will be denied under this section, regardless of the position of the Assistant Attorney General, if an objection to the exemption demonstrates that there is a high probability that the Department would ultimately disapprove the transaction on the merits and that irreparable harm would likely occur if the transaction is exempted

from the prior approval requirements of the Act.

(f) Any exemption granted pursuant to this section does not eliminate carriers' obligations to seek approval of a transaction under either section 408 or section 401(h), if applicable, or constitute a disposition on the merits of any application for approval under those sections.

§ 303.61 Exemptions for Voting Trust Agreements in Section 408 Transactions.

(a) In addition to any other exemption granted under this Part, any air carrier is exempt from section 408 to the extent necessary to permit it to acquire up to 25 percent of the voting securities of another air carrier, provided that:

(1) The acquiring carrier has submitted an application, in accordance with the requirements of this Part, for approval of the acquisition, merger, or consolidation under section 408 or for an exemption from section 408 under section 303.54; and

(2) Prior to acquiring more than 10 percent of the shares of the target carrier, all of its shares of the target carrier are placed in a voting trust that conforms with the following requirements:

(i) All securities held in the voting trust must be voted in the same

proportion as other shares voted; and
(ii) All trust securities must be held by an independent trustee, not affiliated with the acquiring carrier or the target carrier, their subsidiaries or affiliates.

(b) In addition to any other exemption granted under this Part, any air carrier is exempt from section 408 to the extent necessary to permit it to acquire the voting securities of another air carrier, provided that:

(1) The acquiring carrier has submitted an application, in accordance with the requirements of this Part, for approval of the acquisition, merger, or consolidation under section 408 or for an exemption from section 408 under section 303.54;

(2) Prior to acquiring more than 10 percent of the shares of the target carrier, all of its shares of the target carrier are placed in a voting trust that conforms with the following requirements:

(i) All securities held in the voting trust must be voted in the same proportion as other shares voted, except that the trustee may vote the securities for or against specific merger, acquisition or consolidation proposals; and

(ii) All trust securities must be held by an independent trustee, not affiliated with the acquiring carrier or the target carrier, their subsidiaries or affiliates.

(3) The Chief Legal Officer of the acquiring company submits an affidavit that the target company is the subject of a competing takeover bid.

(c) Should the carrier decide not to pursue an acquisition, merger, or consolidation, or should the Department disapprove the transaction, the carrier must promptly file a complete stock divestiture plan.

(d) Exemptions granted under this section shall take effect upon the filing with the Department of an executed voting trust agreement that complies with the requirements set out in paragraph (a) or (b) of this section.

Issued in Washington, DC on May 2, 1986.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 86-10735 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-82-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1306

Withdrawal of Proposal To Change Protocol Requirements for Researchers and Prescription Requirements for Practitioners

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Withdrawal of Proposed rule.

SUMMARY: This notice withdraws the proposed regulations regarding the handling of Schedule II dronabinol drug products by researcher and practitioner registrants under the Controlled Substances Act. Elsewhere in this issue of the *Federal Register*, the Administrator of the Drug Enforcement Administration has published a final order rescheduling this substance and issued a statement of policy concerning its distribution and dispensing.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Diversion Operations Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1216.

SUPPLEMENTARY INFORMATION: On October 18, 1985, the Deputy Assistant Administrator, Office of Diversion Control of the Drug Enforcement Administration published a notice of proposed rulemaking (50 FR 42184-42186) regarding additional controls on the prescribing, administering, dispensing, and the conducting of research with Schedule II dronabinol products. The proposal was issued in conjunction with a notice of proposed rulemaking (50 FR 42186-42187) to

reschedule U.S. Food and Drug Administration approved drug products which consist of dronabinol in sesame oil and encapsulated in soft gelatin capsules from Schedule I to Schedule II of the Controlled Substances Act, 21 U.S.C. 801 et seq. Comments and objections were accepted through November 18, 1985.

Thirteen individuals or organizations availed themselves of the opportunity to comment or object to the proposed changes or the proposed rescheduling of the dronabinol drug product. Two of the thirteen requested administrative hearings on the rescheduling of the dronabinol product. Following withdrawal of the requests for hearings, the Administrator, having considered the requirements of the Controlled Substances Act and the Convention on Psychotropic Substances and taking into account the comments and objections, has decided to proceed with the rescheduling of the dronabinol product and to issue a statement of policy which is published elsewhere in this issue of the *Federal Register*.

Accordingly, consistent with the findings of the Administrator in the final order and statement of policy, the Deputy Assistant Administrator withdraws the proposed changes in protocol requirements for researchers and prescription requirements for practitioners published at 50 FR 42184-42186, October 18, 1985.

List of Subjects

21 CFR Part 1301

Administrative practice and procedures, Drug traffic control; Security measure.

21 CFR Part 1306

Drug traffic control, Prescription drugs.

Dated: May 1, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-10723 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF EDUCATION

34 CFR Part 796

National Diffusion Network

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary issues a Notice of Proposed Rulemaking for the National

Diffusion Network. The intended effect of the proposed regulations is to improve the operation of the National Diffusion Network by increasing the pool of exemplary educational programs available to public and private schools in areas of national need.

DATES: Comments must be received on or before June 12, 1986.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Lois N. Weinberg, U.S. Department of Education, Programs for the Improvement of Practice, Recognition Division, 555 New Jersey Avenue NW., Room 510 F, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Lois N. Weinberg, (202) 357-6134.

SUPPLEMENTARY INFORMATION: Current regulations require that to be eligible for funding by the National Diffusion Network (NDN), exemplary educational programs must be approved by the Joint Dissemination Review Panel (JDRP). The amendments to the NDN regulations proposed in this document would expand the kinds of programs reviewed by the JDRP to include "dissemination processes," in addition to the programs, products and practices it already reviews. The addition of dissemination processes will allow the JDRP to review, and the National Diffusion Network to fund, dissemination systems without reviewing each piece of material to be disseminated. Non-profit organizations such as professional associations and museums, as well as local education agencies, institutions of higher education, and state education agencies that have developed effective systems for the dissemination of educational programs, products, information and materials, would be able to seek support for their activities. The JDRP review would focus on the agency's ability to identify, review and select programs and products rather than on any specific set of materials to be disseminated.

Dissemination processes would be eligible for funding as Developer Demonstrator projects. The description of activities carried out by Developer Demonstrator projects have been revised to show the specific activities required of projects which represent dissemination processes. Like all Developer Demonstrator projects, they will provide information about the project to public and private schools and other education service providers throughout the Nation, they will maintain records about the use of their program materials by schools, they will cooperate with State Facilitator grantees, and they will evaluate the success of the project. There are no

changes in the requirements for the traditional Developer Demonstrator projects that represent programs, products or practices.

The definition of the JDRP will also be revised to clarify that Panel members need not be Federal employees. The definition of JDRP approval will be revised to broaden the kinds of evidence reviewed by the Panel, and to show the different review criteria for dissemination processes.

Changes have also been proposed in the listing of program priorities, from which the Secretary selects categories for funding new projects each year. Several priorities have been expanded and made more specific. Nutrition and physical education have been deleted as separate priorities because programs in those categories, can compete under the health priority. Environmental education has been deleted as a separate priority because programs in that category can compete under the science priority. In future years, specific kinds of programs within those categories can be identified through invitational priorities. The descriptive language for several priorities has been deleted to simplify the whole section. New priorities have been added to reflect the Secretary's interest in character development, the humanities and the importance of better discipline in the schools. A special interest is indicated in programs in conjunction with the bicentennial of the Constitution of the United States. In addition, the new category of dissemination processes can be specified as a funding priority alone or in combination with other priorities.

It is the intention of these regulations to maintain the National Diffusion Network's focus on the dissemination of outstanding programs, products and practices. It is not the intention of these regulations to support program development activities.

Executive Order 12291

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

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

Only a very small number of grants will be awarded, and these proposed regulations do not impose any additional requirements.

Intergovernmental Review

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

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

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 510 F, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 796

Dissemination, Education, Educational research, Grant programs education, Reporting and recordkeeping requirements.

Citation of Legal Authority

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

(Catalog of Federal Domestic Assistance number 84.073—National Diffusion Network)

Dated: May 8, 1986.

William J. Bennett,
Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal

Regulations by revising Part 796 as follows:

PART 796—NATIONAL DIFFUSION NETWORK

1. The authority citation for Part 796 is revised to read as follows:

Authority: 20 U.S.C. 3851, unless otherwise noted.

2. Section 796.3(b) is amended by adding a definition of "dissemination process" and revising the definitions of "exemplary educational program," "Joint Dissemination Review Panel," and "JDRP approval," to read as follows:

§ 796.3 What definitions apply to the NDN?

(b) * * *

"Dissemination process" means a system for reviewing, selecting and providing information and materials about a specific content area, field of professional development, or body of research, that will be of use to educational service providers.

"Exemplary educational program" or "program" means a program, product, practice or dissemination process approved by the Joint Dissemination Review Panel.

"Joint Dissemination Review Panel" or "JDRP" means a panel of Federal and non-Federal experts, appointed by the Secretary, that examines evidence of effectiveness and potential value to educators in attaining goals of educational programs, products, practices or dissemination processes.

"JDRP approval," with respect to a dissemination process, means that the JDRP has determined that—

(1) The dissemination process has significant potential value to educational service providers that has been demonstrated;

(2) The dissemination process is accurately described;

(3) The materials to be disseminated could be used effectively in varied locations;

(4) The cost would be reasonable; and

(5) The dissemination process includes a review by qualified personnel of materials and information to be disseminated, using appropriate criteria such as academic merit and freedom from race and sex-role stereotyping.

"JDRP approval," with respect to a program, product or practice, means that the JDRP has determined that—

(1) A positive change has occurred that has been demonstrated to be directly attributable to the program, product or practice;

(2) The change was educationally significant, either as measured

statistically or by other persuasive evidence;

(3) The evidence supporting these conclusions was gathered and interpreted correctly;

(4) The program, product or practice is accurately described;

(5) The program, product or practice could be used effectively in other locations;

(6) The cost would be reasonable, considering the magnitude and the subject of change;

(7) The program, product or practice has a high quality evaluation design; and

(8) The program, product or practice is free from race and sex-role stereotyping.

3. Section 796.12 is revised to read as follows:

§ 796.12 What activities must be Developer Demonstrator project conduct?

(a) A Developer Demonstrator project that represents a program, product or practice that has JDRP approval must—

(1) Develop and provide material—
(i) For educational service providers throughout the Nation to use in deciding whether to adopt the program, product or practice; and
(ii) For training and instruction in the program, product or practice;

(2) Negotiate adoption agreements with State Facilitator grantees and educational service providers;

(3) Install the program, product or practice in new settings in other States by—

(1) Assisting potential adopters with preparatory steps;

(ii) Providing training to staff members of the adopting educational service provider; and

(iii) Providing technical assistance in the implementation and evaluation stages of an adoption;

(4) Evaluate the quality and effectiveness of the activities listed in paragraphs (a)(1), (2) and (3) of this section as specified in the evaluation plan for the project;

(5) Monitor and evaluate the quality and effectiveness of the adoptions by collecting and analyzing impact data from a representative sample of adoption sites, as specified in the evaluation plan for the project;

(6) Maintain records during the grant period concerning the use of the program, product or practice, including records of—

(i) Demographic data;

(ii) Evaluation data; and

(iii) Program retention rates;

(7) Develop and implement a system to identify and train certified trainers;

(8) Identify and certify demonstration sites throughout the Nation;

(9) Participate with other NDN grantees in workshops and meetings arranged by the Secretary; and

(10) Cooperate with State Facilitator grantees in carrying out the activities of this section.

(b) A Developer Demonstrator project that represents a dissemination process that has JDRP approval must—

(1) Develop and provide information and material about the contest area, field of professional development or body of research for educational service providers throughout the Nation;

(2) Evaluate the quality and effectiveness of the dissemination process as specified in the evaluation design for the project;

(3) Maintain records during the grant period concerning the use of the information and materials, including demographic records;

(4) Monitor and evaluate the extent of use and the educational results of the information and materials selected by educational service providers;

(5) Participate with other NDN grantees in workshops and meetings arranged by the Secretary; and

(6) Cooperate with State Facilitator grantees in carrying out the activities in this section. (20 U.S.C. 3851).

4. Section 796.15 is revised to read as follows:

§ 796.15 Will priorities for funding Developer Demonstrator grants be established?

(a)(1) Each year the Secretary may announce in a notice published in the *Federal Register* the program priorities for which applicants may apply for assistance.

(2) The Secretary selects priorities under this section after taking into consideration any unmet national needs.

(b) The Secretary may select priorities from the following subject areas or special needs:

(1) English, including literature.

(2) Science.

(3) History, geography, and civics, including special history programs in conjunction with the bicentennial of the Constitution of the United States.

(4) Mathematics or higher mathematics.

(5) Reading.

(6) Written or oral communication.

(7) Health.

(8) Character and ethics.

(9) The humanities.

(10) Programs that assist in improving school discipline and foster an atmosphere conducive to learning.

(11) Foreign languages.

(12) Computer science.

(13) Programs that advance students' educational and occupational goals, such as courses in the fine and performing arts, vocational education, and industrial arts.

(14) Programs that improve students' skills in comprehension, analysis, and problem solving, including programs in philosophy.

(15) Programs that improve teaching and the quality of instruction.

(16) Education leadership.

(c) In addition to the priorities listed in paragraph (b) of this section, the Secretary may establish priorities as specified in one or both of the following paragraphs:

(1) The Secretary may establish priorities at specified instructional levels, such as preschool, elementary, secondary, postsecondary, or adult education.

(2) The Secretary may establish as a priority one or more of the following special populations:

- (i) Gifted and talented students.
- (ii) Socioeconomically disadvantaged students.
- (iii) Limited English proficient students.
- (iv) Handicapped students.
- (v) Migrant students.
- (vi) Functionally illiterate adults or adolescents.

(d) The Secretary may also limit a priority established under paragraph (b) of this section to—

- (1) An instructional level;
- (2) One or more of the special populations listed in paragraph (c)(2) of this section; or
- (3) Both an instructional level and one or more of the special populations listed in paragraph (c)(2) of this section.

(e) The Secretary may limit a competition established under these regulations to a dissemination process. (20 U.S.C. 3851)

4. Section 796.31(d) redesignated as paragraph (e) and a new paragraph (d) is added as follows:

§ 796.31 How does the Secretary evaluate an application for a Developer Demonstrator or a State Facilitator grant?

(d) In applying the selection criteria in § 796.32 to an application, the Secretary considers the extent to which excellence, balance, and imagination are demonstrated by the proposed activities.

5. Section 796.34(a) is revised to read as follows:

§ 796.34 What additional criteria exist for new and continuation awards?

(a) In determining the order of selection under EDGAR § 75.217(d) for

new Developer Demonstrator awards, the Secretary seeks diversity of projects funded under a particular competition or under this program.

* * * * *
[FR Doc. 86-10729 Filed 5-12-86; 8:45 am]

BILLING CODE 4000-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1228, 1232, 1236, 1239

Records management

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises agency program responsibilities for audiovisual records management, providing more specific standards and instructions to Federal agencies. The proposed rule is intended to correct problems found by NARA during records management surveys and during the accessioning of audiovisual records into the National Archives. The proposed rule would add a provision that destruction of restricted records may be witnessed by contractor employees when an agency agrees. This change would allow the National Archives and Records Administration (NARA) to reduce the cost of this type of records disposal. This document also proposes to remove obsolete regulations governing preservation of records by war contractors. The proposed rule also makes minor technical and editorial corrections to other records management regulations.

DATE: Comments must be received by June 12, 1986.

ADDRESS: Comments should be sent to Director, Program Policy and Evaluation Division, National Archives and Records Administration (NARA), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202-523-3214 (FTS 523-3214).

SUPPLEMENTARY INFORMATION: This proposed rule provides, in 36 CFR Part 1232, specific guidance to Federal agencies on the creation, maintenance, use, and disposition of audiovisual records. 36 CFR Part 1239, Preservation of Records by War Contractors, would be removed since this regulation is obsolete and a revised regulation is not needed.

In 36 CFR Part 1228, General Records Schedule 25, Inspector General Records, would be added to the list of current general records schedules in 36 CFR

1228.22. Section 1228.74 would be modified to allow contractor employees to witness the destruction of restricted records when the agency which created the records authorizes such an action. Section 1228.162(a) would be revised to remove the reference to purchasing Standard Form 180, Request Pertaining to Military Records, from the Superintendent of Documents since the Superintendent of Documents no longer stocks the form for sale.

References in Part 1228 to the General Services Administration regulations on approval of interagency reports have been revised to reflect those regulations' new location in 41 CFR Part 201-45. In 36 CFR 1236.8, a reference to the Federal records center in Mechanicsburg, PA, which has been closed, is deleted.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of subjects

36 CFR Parts 1228, 1232, and 1236

Archives and records.

36 CFR Part 1239

Archives and records, Government property management, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, NARA proposes to amend Title 36 of the Code of Federal Regulations as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for Part 1228 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

§ 1228.22 [Amended]

2. Section 1228.22 (b) is amended by adding General Records Schedule 25 to read as follows:

"25. Inspector General Records."

3. Section 1228.74 is amended by revising paragraph (b) to read as follows:

§ 1228.74 Methods of disposal.

(b) *Sale or salvage.* Paper records to be disposed of normally must be sold as wastepaper. If the records are defense classified, their disposal is governed by Executive Order 12356. If the records are restricted; that is, if laws or regulations forbid their use by the public, the wastepaper contractor must be required to pulp, macerate, or shred the records,

and their destruction must be witnessed either by a Federal employee or, if authorized by the agency that created the records, by a contractor employee. The contract for sale must prohibit the resale of all other records for use as records or documents. Records other than paper records (film and plastic recording, etc.) may be salvaged and sold in the same manner and under the same conditions as paper records. All sales must be in accordance with the established procedures for the sale of surplus personal property. (See 41 CFR Part 101-45, Sale, Abandonment, or Destruction of Personal Property.)

4. Section 1228.92 is amended by revising paragraph (e) to read as follows:

§ 1228.92 Menaces to human life or health or the property.

(e) This report has been cleared in accordance with 41 CFR Part 201-45 and assigned Interagency Report Control Number 1095-NAR-AR.

5. Section 1228.104 is amended by revising paragraph (b) to read as follows:

§ 1228.104 Reporting.

(b) This report has been cleared in accordance with 41 CFR Part 201-45 and assigned Interagency Report Control Number 0285-NAR-AR.

(6) Section 1228.162 is amended by revising paragraph (a) to read as follows:

§ 1228.162 Use of records in Federal records centers.

(a) Standard Form 180, Request Pertaining to Military Records, shall be used by Federal agencies to obtain information from military service records in the National Personnel Records Center (Military Personnel Records). Agencies may furnish copies of that form to the public to aid in inquiries.

PART 1232—AUDIOVISUAL RECORDS MANAGEMENT

7. The authority citation for Part 1232 continues to read as follows:

Authority: 44 U.S.C. 2904 and 3101.

8. Section 1232.4 is revised to read as follows:

§ 1232.4 Agency program responsibilities.

(a) Each Federal agency, in providing for effective controls over the creation

of records, shall establish an appropriate program for the management of audiovisual records which program shall be governed by the following guidelines:

(1) Prescribe the types of records to be created and maintained so that audiovisual operations and their products are properly documented (guidelines describing the appropriate types of records are in § 1228.184 of this chapter).

(2) For contractor-produced audiovisual records, establish contract specifications which will protect the Government's legal title and control over all such audiovisual media and related documentation.

(3) Keep inventories indicating the location of all generations of audiovisual records, whether in agency storage, a Federal records center, or in a commercial facility such as a laboratory or library distribution center.

(4) Schedule disposition of all audiovisual records as soon as practicable after creation, following the instruction in GRS 21, Audiovisual Records, or a specific agency records schedule approved by the Archivist of the United States. The scheduling of permanent records must take into account the different record elements identified in § 1228.184, and must always include related finding aids.

(5) Review agency audiovisual recordkeeping practices for possible improvement.

(b) Each Federal agency, in establishing a program for proper storage, maintenance, and use of audiovisual records, shall implement the following standards in its practices:

(1) *Nitrate Film:* Remove nitrocellulose-base motion pictures, still pictures, and aerial film from records storage areas and place them in vaults meeting the standards prescribed in NFPA 40-1982, Cellulose Nitrate Motion Picture Film, which is incorporated by reference. Because of their age and inherent instability, immediately offer nitrate films to NARA so that they may be reviewed for disposal or copied and destroyed, as appropriate. NFPA 40-1982 is available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. This standard is also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW, Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register on —, 1986. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these

materials will be published in the **Federal Register**.

(2) *Unstable Safety Film:* Identify permanent or unscheduled audiovisual records composed of diacetate or other early forms of acetate film that are starting to deteriorate and offer them to NARA so that they can be copied. Although not hazardous like nitrate film, acetate film will deteriorate over time.

(3) *Storage Conditions:* (i) Provide audiovisual records storage facilities secure from unauthorized access and make them safe from fire, water, flood, chemical or gas damage, and from other harmful conditions. See NFPA 232-1986, Standard for Protection of Records issued by the National Fire Protection Association, which is incorporated by reference. The standard is available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. This standard is also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW, Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register on —, 1986. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**.

(ii) Maintain good ambient storage conditions for audiovisual records. Generally, the temperature should not exceed 70 degrees F and relative humidity should be maintained in the range of 40-60%. Avoid fluctuating temperatures and humidities. Cooler temperatures and lower relative humidities are recommended for the storage of color films, and, for that reason, NARA will make a limited amount of temporary space available for the cold storage of Federal civilian agencies' color originals, negatives, and masters, provided the records are scheduled as permanent and are inactive.

(iii) For the storage of permanent or unscheduled records, utilize audiovisual storage containers or enclosures made of noncorroding metal, inert plastics, paper products and other safe materials recommended and specified in ANSI standards PH1.43-1985, Practice for Storage of Processed Safety Photographic Film; PH1.48-1982, Photography (Film and Slides) Black-and-White Photographic Paper Prints—Practice for Storage; and PH1.53-1984, Standard for Photography (Processing)—Processed Films, Plates, and Papers—Filing Enclosures and Containers for Storage. These standards, which are

incorporated by reference, are available from ANSI, Inc., 1430 Broadway, New York, NY 10018. These standards are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW, Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register on _____, 1986. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(iv) Maintain originals and use copies (e.g., negatives and prints) separately, whenever practicable.

(4) *Maintenance and Operations:* (i) Because of their extreme vulnerability to damage, handle audiovisual records in accordance with commonly-accepted industry practices. For further information, consult ANSI, Inc., 1430 Broadway, New York, NY 10018 and the Society of Motion Picture and Television Engineers, Inc., 862 Scarsdale Avenue, Scarsdale, NY 10583. Use only personnel trained to perform their audiovisual duties and responsibilities.

(ii) Maintain continuous custody of permanent or unscheduled audiovisual records. Make loans of such records outside of the agency only if a record copy is maintained in the agency's custody at all times.

(iii) Take all steps necessary to prevent accidental or deliberate alteration or erasure of audiovisual records.

(iv) Do not erase information recorded on permanent or unscheduled magnetic sound or video media.

(v) If different versions of audiovisual productions (e.g., short and long versions or foreign-language versions) are prepared, keep an unaltered copy of each version for record purposes.

(vi) Maintain the association between audiovisual records and the finding aids for them, such as captions and published and unpublished catalogs.

(5) *Formats:* (i) When ordering photographic materials for permanent or unscheduled records, ensure that still picture negatives and motion picture preprints (negatives, masters, etc.) are composed of cellulose triacetate or polyester bases and are processed in accordance with industry standards as specified in ANSI PH1.28-1984, Specifications for Photographic Film for Archival Records, Silver Gelatin Type on Cellulose Ester Base, or PH1.41-1984, Photographic Film for Archival Records, Silver Gelatin Type on Polyester Base, which are incorporated by reference. It is particularly important to limit hypo residual sodium thiosulphate on newly

processed photographic film, black and white or color, to the range of .002 to .004 grams per meter. Request laboratories to process film in accordance with this standard. Excessive hypo will shorten the longevity of film and accelerate color fading. If using reversal type processing, request full photographic reversal; i.e., develop, bleach, expose, develop, fix, and wash. The standards cited in this paragraph are available from ANSI, Inc., 1430 Broadway, New York, NY 10018. These standards are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW, Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register on _____, 1986. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(ii) Do not use motion pictures in a final "A & B" format (two precisely matched reels designed to be printed together) for the reproduction of excerpts or stock footage.

(iii) Use only industrial or professional format video tapes (e.g., 1-inch, 3/4-inch) for record copies of permanent or unscheduled recordings. Limit the use of consumer formats (e.g., VHS, Beta) to distribution or reference copies or to subjects scheduled for disposal.

(iv) Record permanent or unscheduled audio recordings on 3/4-inch open-reel tapes at 3 3/4 or 7 1/2 inches per second, full track, using professional unrecorded polyester splice-free tape stock. Audio cassettes are not sufficiently durable to be used for permanent records.

(c) The disposition of audiovisual records shall be carried out in the same manner as that prescribed for other types of records in Part 1228 of this chapter. For further instructions on the disposition of audiovisual records see § 1228.184 of this chapter, Audiovisual Records.

PART 1236—VITAL RECORDS DURING AN EMERGENCY

9. The authority citation for Part 1236 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

§ 1236.8 [Amended]

10. Section 1236.8 is amended by removing in paragraph (a) the words "(except the FRC in Mechanicsburg, PA)".

PART 1239—PRESERVATION OF RECORDS BY WAR CONTRACTORS

11. Part 1239 is removed and reserved.

Dated: April 25, 1986.

Claudine J. Weither,

Acting Archivist of the United States.

[FR Doc. 86-10694 Filed 5-12-86; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50527; FRL-2928-8]

Toxic Substances; Significant New Use Rules; Proposed Amendments to General Provisions and Individual Rules

Correction

In FR Doc. 86-8625 beginning on page 15104 in the issue of Tuesday, April 22, 1986, make the following corrections:

1. On page 15107, third column, three lines from the bottom, insert roman numeral "V" in front of "Economic Analysis".

2. On page 15108, first column, seventh line, "In come" should read "In some". In the same column, fourth complete paragraph, eleventh line, insert the following after "equivalency": "determination. In the absence of this proposed amendment,".

3. On page 15110, in § 721.7, second column, eighth line, "7076" should read "707".

4. On page 15111, first column, in § 721.18(h), seventh line, "dates" should read "date".

5. On the same page, second column, in § 721.19(a)(2), first line, "manufacture" should read "manufacturer". In the same column, in § 721.19(b)(1)(iv), last line, insert "or" before "processor".

BILLING CODE 1505-01

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6712]

Proposed Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

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

in order to qualify or remain qualified for participation in the National Flood Insurance Program.

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

ADDRESSES: See table below.

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

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

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

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under

section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement: of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

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

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

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	Depth in feet above ground * Elevation in feet (NGVD)	
				Existing	Modified
California	City of Los Angeles (Los Angeles County).	Pacific Ocean	Approximately 350 feet south of the center of the intersection of Pacific Coast Highway and Sunset Blvd., at the shoreline.	None	*11
		Pacific Ocean	Approximately 500 feet south-west of the center of the intersection of Sunset Avenue and Ocean Front Walk, at the shoreline.	None	*12
		Pacific Ocean	Approximately 550 feet south of the center of the intersection of Paseo Del Mar and Western Avenue, at the shoreline.	None	*13
Maps are available for review at the Department of Public Works, City Hall, 200 North Spring Street, Los Angeles, California. Send comments to The Honorable Tom Bradley, Mayor, City of Los Angeles, City Hall, 200 North Spring Street, Los Angeles, California 90012.					
California	Palm Desert (city), Riverside County.	Dead Indian Canyon	At the intersection of Portola Avenue and State Highway 74.	# 1	None
		Deep Canyon Channel	At the intersection of Portola Avenue and Haystack Road.	# 3	None
		Palm Valley Stormwater Channel (Palm Valley Drain).	At the intersection of Bursara Way and Pitahava Street.	# 1	None.
Maps available for inspection at the Planning and Engineering Department, 73510 Fred Waring Drive, Palm Desert, California. Send comments to the Honorable Richard Kelley, Mayor, City of Palm Desert, 73510 Fred Waring Drive, Palm Desert, California 92260.					
Illinois	Village of Shorewood	Hammel Creek	At mouth	*577	*577
		Hammel Creek	Just downstream of River Road	*616	*616
		Hammel Creek Tributary	Just upstream of the confluence with Hammel Creek	None	*606
		Robin Hill Road Split Flow	Just downstream of River Road	None	*614
			At confluence with Hammel Creek	None	*605
			At divergence from Hammel Creek	None	*613
Maps available for inspection at the Planning Department, Shorewood Village Hall, Route 52 and Raven Road, Shorewood, Illinois. Send comments to The Honorable Jim Shapard, Village Administrator, Village of Shorewood, Shorewood Village Hall, Route 52 and Raven Road, Shorewood, Illinois 60436.					
Indiana	Town of Edinburg, Bartholomew & Johnson Counties.	East Side Swale	About 800 feet downstream of County Line Road	*668	*668
			Just downstream of State Route 252	*674	*671
Maps available for inspection at the Town of Edinburg, P.O. Box 65, Edinburg, Indiana. Send comments to The Honorable James Billingsley, President of the Board, Town of Edinburg, P.O. Box 64, Edinburg, Indiana 46124-0064.					
Louisiana	Hammond, city, Tangipahoa Parish	Ponchartroula Creek	Upstream side of East Church Street	*40	*41
		Yellow Water River Canal	Upstream side of Illinois Central Gulf Railroad	*40	*42
			At Blackburn Road (extended)	*44	*43
			At upstream corporate limits	*45	*44
	Shallow Flooding	Upstream of Illinois Gulf Central Railroad	*43	*42	

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	* Depth in feet above ground * Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, Hammond, Louisiana. Send comments to The Honorable Debbie Saik Pope, Mayor of the City of Hammond, City Hall, P.O. Box 2788, Hammond, Louisiana 70404.					
New York	Saltire, Village Suffolk County	Atlantic Ocean Great South Bay	Shoreline at Atlantic Walk (extended) Shoreline at Pacific Walk (extended)	*14 * 5	*15 * 6
Maps available for inspection at the Village Hall, P.O. Box P551, Bay Shore, New York. Send comments to The Honorable Lawrence P. King, Mayor of the Village of Saltire, Suffolk County, P.O. Box P551, Bay Shore, New York 11706.					
Oregon	City of Stanfield, Umatilla County	Umatilla River	At the Intersection of Umatilla Street and W. Seymour Street	*596	*591
Maps available for inspection at City Hall, 105 Westwood, Stanfield, Oregon. Send comments to The Honorable Lewis Martuscelli, P.O. Box 369, Stanfield, Oregon 97875.					
Texas	Uvalde, city, Uvalde County	Leona River Taylor Slough	Downstream corporate limits Upstream side of East Napal Street Upstream side of Studer Street Upstream corporate limits Downstream corporate limits Approximately 80 feet upstream of FM Highway 1023 Upstream corporate limits	*894 *899 *907 *913 *909 *916 *921	*887 *891 *902 *904 *907 *912 *917
Maps available for inspection at the City Permits Office, Main Street, Uvalde, Texas. Send comments to The Honorable James Thurman, Manager of the City of Uvalde, Uvalde County, P.O. Box 799, Uvalde, Texas 78801.					

Issued: April 23, 1986.

Jeffrey S. Bragg,
Administrator, Federal Insurance
Administration.

[FR Doc. 86-10679 Filed 5-12-86; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 222

Superfund Cost Sharing Eligibility Criteria for Permanent and Temporary Relocation

AGENCY: Federal Emergency
Management Agency.

ACTION: Proposed rule.

SUMMARY: This regulation establishes policy implementing the Federal Emergency Management Agency's (FEMA) responsibility under Executive Order 12316 with regard to the State's allowable costs associated with the administration of permanent and temporary relocation activities, as part of a hazardous materials response action taken under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

The regulation will provide for consistent implementation of the program whether administered by FEMA, or by states.

DATE: Comments must be received on or before July 14, 1986.

ADDRESS: Comments should be submitted to: Rules Docket Clerk, Office of General Counsel, Federal Emergency

Management Agency, Room 835, 500 "C" Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT:
Karen Forbes, Superfund and Relocation Assistance Branch, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street, SW., Room 701, Washington, DC 20472, (202) 646-3804.

SUPPLEMENTARY INFORMATION:

Executive Order 12316, Responses to Environmental Damages (August 14, 1981), assigned to FEMA responsibility for permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), section 104(c)(3) states that the State will pay or assure payment of (i) 10 percentum of the costs of the remedial action, including all future maintenance, or (ii) at least 50 percentum or such greater amount as the President may determine appropriate taking into account the degree of responsibility of the State or political subdivision of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. The Federal Government will pay 90 percentum under (1) and 50 percentum or less under (ii).

The information collection and reporting requirements in the proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction

Act of 1980, 44 U.S.C. 301 et seq. Submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20503 marked "Attention: Desk Officer for FEMA." The final rule will respond to any OMB or public comments on the information collection and reporting requirements.

Environmental Considerations

FEMA has determined that the Superfund Cost Share Eligibility Criteria for Permanent and Temporary Relocation is an administrative regulation. Therefore, there will be no impact on the environment.

Regulatory Flexibility Act

The Agency has determined that this rule is not a major rule under Executive Order 12291, and I certify that the rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Most public entities receiving financial assistance have audits performed for their purposes. Therefore the proposed regulatory changes are not likely to create a significant economic impact on a substantial number of small entities. Hence, no regulatory impact analysis have been prepared.

List of Subjects in 44 CFR Part 222

Relocation assistance grants
Administration, Hazardous substances,
Superfund.

Accordingly, it is proposed to amend 44 CFR Chapter I by adding a new Part 222 as follows:

PART 222—SUPERFUND COST SHARE ELIGIBILITY CRITERIA FOR PERMANENT AND TEMPORARY RELOCATION

Sec.

- 222.1 Purpose
 222.2 Definitions.
 222.3 Program intent.
 222.4 Matching contributions.
 222.5 Criteria for in-kind contributions.
 222.6 Documentation of in-kind contributions.
 222.7 General eligible costs.
 222.8 Ineligible costs.
 222.9 Appeals.

Authority: Reorganization Plan Number 3 of 1978; 42 U.S.C. 9601 et seq., Executive Order 12316.

§ 222.1 Purpose.

This part prescribes the policies to be followed by the Federal Emergency Management Agency (FEMA), or any state acting on its behalf when implementing cost sharing under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), also known as Superfund.

§ 222.2 Definitions.

"Acceptable Contributions" means either cash (or its equivalent, appropriated funds) or in-kind contributions of goods, facilities or services, or combinations of these, can qualify for and meet matching share requirements.

"Allowable Costs" means those eligible, reasonable, necessary, and allowable costs which are permitted under the appropriate Federal cost principles, in accordance with FEMA policy, within the scope of the project and authorized for FEMA participation.

"Cash Contributions" means the recipients cash outlay, including the outlay of money contributed to the recipient by other public agencies, institutions, private organizations, and individuals.

"In-kind Contribution" means the value of a non-cash contributions provided by the State. In-kind contributions may be in the form of charges for real property and the value of goods and administrative services directly benefitting and specifically identifiable with the permanent or temporary relocation.

§ 222.3 Program intent

(a) This regulation is intended to provide guidance with regard to the State's allowable costs associated with the administration of temporary and permanent relocation activities under CERCLA. CERCLA section 104(c)(3) states that the State will pay or assure payment of (1) 10 percentum of the costs

of the remedial action, including all future maintenance or (2) at least 50 percentum or such greater amount as the President may determine appropriate taking into account the degree of responsibility of the State or political subdivision of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substance therein by the State or a political subdivision thereof.

The Federal Government will pay 90 percentum under (a)(2) and 50 percentum or less under (a)(2).

(b) FEMA will determine, based on policy determinations with prospective effect, the eligibility of any in-kind contributions not covered by this regulation. Expenditures and other actions must be in compliance with applicable FEMA/State cooperative agreements, contracts, Uniform Relocation Assistance and Real Property Acquisition Regulation, relocation plans, relocation criteria and applicable relocation regulations.

(c) FEMA shall maintain adequate records of its acquisition and relocation activities in sufficient detail to demonstrate compliance with these regulations.

(d) This regulation shall be used in conjunction with the following documents as necessary:

- (1) CERCLA 96-510;
- (2) Uniform Relocation Assistance and Real Property Acquisition Regulation;
- (3) Appropriate relocation regulations or criteria.

§ 222.4 Matching contributions.

This paragraph establishes the criteria and procedures for matching contributions. Either cash and/or in-kind contributions can qualify as matching contributions. Matching contributions need not be applied at the exact time or in proportion to the obligation of the Federal funds. However, the full matching share must be obligated by the end of the project for which the federal funds have been made available for obligation under an approved program or project.

§ 222.5 Criteria for in-kind contributions.

(a) The value of any resources accepted as in-kind contribution under one Federal agreement or program cannot be counted again as a contribution under another.

(b) Before an in-kind contribution will be accepted as fulfilling matching share requirements, the state seeking the match shall submit documentation sufficient for FEMA to determine that the contribution meets the following requirements. The match shall be:

(1) Necessary and reasonable for proper, cost effective and efficient administration of the project, allocable solely thereto, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State and local governments;

(2) Verifiable from primary recipient's records;

(3) Not allocable to or included as a cost of any other federally financed program;

(4) Authorized under State law;

(5) Conform to any limitations or exclusions set forth in these regulations, federal laws or other governing limitations as to types or amounts of cost items; and

(6) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

§ 222.6 Documentation of in-kind contributions.

(a) The State shall maintain documentation for all items related to the relocation that it plans to use as an in-kind contribution. For items eligible for in-kind contribution. Documentation of dates on which the action took place, who performed such action, the cost, and specific work performed shall be sufficient. For items eligible for in-kind contributions, documentation of dates on which the action took place, who performed such action, the cost, and specific work performed shall be sufficient.

(b) When items are not specifically on the list of General Eligible Costs, § 222.7 of this part, the following documents shall be required. Sufficient supporting documents detailing the type of work eligible, justification to the relocation activity, the dates on which the actual work was performed and the cost of services required.

(c) The State shall also comply with the following requirements for all in-kind contributions:

(1) The State is responsible for maintaining records of the matching shares and providing the documentation by eligible category when requested by FEMA or its agent.

(2) The basis by which the State determines the value of in-kind contributions must be documented and a copy retained as part of the official record. State matching share records are subject to audit inspection in the same manner and to the same extent as records dealing with the receipt and disposition of Federal funding.

(3) These records shall become property of FEMA following completion

of the project or, at FEMA's request, shall be retained by the State for a period of three years.

§ 222.7 General eligible costs.

The following is a list of eligible expenditures. When items do not appear on the list they will be considered by policy determinations, based on criteria set forth above. All costs must be reasonable.

(a) Direct and indirect salaries or wages (including overtime) of employees hired specifically for the permanent or temporary relocation are eligible when engaged in the performance of eligible work for the permanent or temporary relocation.

(b) Direct and indirect salaries or wages (including overtime) of state employees whose duties change, are eligible when they are engaged in the performance of eligible work for the permanent or temporary relocation.

(c) Regular salaries or wages of regularly employed police and fire personnel are eligible when they are engaged in the performance of work for the permanent or temporary relocation.

(d) Reasonable costs for work performed by private contractors on eligible projects contracted for by the State.

(e) Audit costs for the relocation activity.

(f) Costs for providing site-security.

(g) Travel costs and per diem costs of state employees not to exceed the actual subsistence expense basis for the permanent or temporary activity. Federal Travel Regulations (FTRs) must be followed.

(h) Cost for rental of protective gear and costs for gear reasonably lost, worn out or destroyed when used in performing work directly related to the permanent relocation activity and fully

documented. Protective gear may be purchased if it cannot be rented more cheaply.

(i) Only costs for the control of vectors which exceed the average cost included for same during the previous three years, when such controls are in the public interest.

(j) Costs for providing permanent relocation assistance when in accordance with Pub. L. 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (84 Stat. 1894; 42 U.S.C. 9615) and FEMA criteria issued pursuant thereto, which include:

(1) Costs for exercising the power of eminent domain to obtain any privately owned real property interest;

(2) Costs for the filing and recording of deeds in the recorder's office;

(3) Costs for the review of all sales contracts, title insurance commitments and deeds regarding the conveyance of real property interests prior to the purchase of such real property interests; and,

(4) Costs for the development and implementation of a property acquisition and permanent relocation assistance program. These include, but are not limited to the following costs:

(i) Development of a permanent relocation analysis;

(ii) development and implementation of a community relations program;

(iii) Title searches and appraisals for property within the boundaries of the project;

(iv) A relocation assistance advisory program;

(v) Title reviews, settlements and closings associated with properties located within boundaries of the project;

(vi) The preparation of offers of compensation;

(vii) Acquisition of properties; and,

(viii) Costs for administrative settlements.

(k) Costs for providing temporary relocation assistance in accordance with FEMA policies which include; negotiating leases, rent reimbursements, moving expenses, essential utility costs at original residence, food subsidy during transient accommodations, rental of essential furniture, and kennel costs.

§ 222.8 Ineligible costs.

(a) Regular salaries or wages of State employees, other than police or fire personnel, whose duties do not change or are not directly associated with the permanent or temporary relocation are ineligible.

(d) Replacement of revenue lost as a result of contamination in the project area are not eligible.

(c) Costs associated with potential litigation as a result of the States' pursuit and recovery of the States' cost share.

§ 222.9 Appeals.

The Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support, shall be responsible for making policy determinations regarding the allowability of in-kind contributions not specifically covered in these criteria. Appeals from the determinations of the Assistant Associate Director may be made to the Associate Director, State and Local Programs and Support.

Dated: May 6, 1986.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 86-10671 Filed 5-12-86; 8:45 am]

BILLING CODE 6718-02-M

Notices

Federal Register

Vol. 51, No. 92

Tuesday, May 13, 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.

ACTION

Special Volunteer Programs; Availability of Funds; Demonstration Grants

Background

Currently in the United States, about 275,000 children reside in foster care facilities, family foster homes, community group homes or institutions because their parents are unable to care for them. Almost 45%, or an estimated 42,000, are between the ages of 13 and 20 years; and each year 9,000 to 12,000 leave foster care because they reach the age at which the State no longer assumes responsibility for their care.

Frequently, these youth are not prepared to take on all of the responsibilities of adulthood, such as securing employment, managing money, finding housing and meeting their daily needs. They also lack the continuing family and community support which enables adolescents to make the transition to adulthood. The purpose of this announcement is to solicit community volunteer programs which will assist youth leaving foster care to achieve self-sufficiency.

A. The Office of Voluntarism Initiatives of ACTION announces the availability of funds during fiscal year 1986 for demonstration grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113, Title I, Part C, 42 U.S.C. 4992).

The purpose of this program is to strengthen and supplement efforts to meet a broad range of needs, particularly those related to poverty, by encouraging and enabling persons from all walks of life and from all age groups to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may help to meet such needs.

The purpose of this process is to identify and support innovative volunteer service projects that focus on assisting young people who are in foster care to make the transition to living as independent adults.

Consideration will be given to projects using volunteer service to help foster care children (age 16 to 21) who will be or have been released to their own responsibility, to leave the court and social service systems and to develop independent living skills through the provision of support services.

In planning and implementing their approaches to assisting youth in transition from foster care, applicants shall build upon existing knowledge about voluntarism.

Applicants shall describe their consultation with private and public agencies regarding the numbers and needs of such youth in their community and the ways in which a volunteer program can be most effective in providing assistance during the transitional period and beyond.

Objectives

Volunteer Demonstration Projects address areas of human and social concern where citizens, as volunteers, can contribute toward individual self-reliance and community self-sufficiency. Projects funded under this announcement must be able to: (1) Provide behavioral skills training (e.g. hygiene, grooming, interpersonal relationships); (2) provide vocational and educational opportunities and counselling; (3) provide home management/personal financial management skills (e.g. budget, housekeeping, home economics, banking); (4) provide housing search skills including the establishment of host homes if appropriate; (5) provide educational planning or referral for such; (6) provide support services such as transportation and adequate clothing; (7) provide literacy training or referral for such; (8) provide establishment of relationship with/in private sector to obtain jobs and on-the-job training; (9) provide recruitment of volunteers, including the elderly for intergenerational interaction and youths for peer relationship, to work as mentors on a one-to-one basis; (10) provide development of how-to-manual for their own use to orient new volunteers to this

program and to provide information concerning resources available to volunteers; and (11) one project will be funded to develop a how-to-manual for the replication of similar programs in other communities.

B. Eligible Applicants. Only applicants from private, non-profit incorporated organizations and public agencies will be considered.

C. Available Funds and Scope of the Grant. ACTION anticipates awarding grants ranging in size from \$40,000 to a maximum of \$100,000. Publication of this announcement does not obligate ACTION to award any specific number of grants, or to obligate any specific amount of money for demonstration grants.

D. General Criteria for Grant Selection. Grant applications will be reviewed and evaluated in comparison with the criteria outlined below, as appropriate, as well as conformance with the instructions included in the application. Grant applications that have demonstrated competence in using volunteers to work with youth from the foster care system will be given preference.

The General Criteria are as follows:

1. Promise of developing innovations or knowledge in solving problems within the designated client population and significance to national development.
2. Clarity of objectives that are measurable and phased and the feasibility of proposed methods for meeting those objectives.
3. Capability of proposed staff.
4. Likelihood of completion of project within proposed timetable.
5. Potential for replication of the project model including plans for implementation and dissemination of results of project and any products, such as reports and manuals for use by others.
6. Feasibility of proposed budget.
7. Adequacy of plans for data gathering and evaluation.
8. Letters of support from collaborating agencies and organizations where such could be expected to contribute to the value or success of the project.
9. Plans for continuation of the activities and self sufficiency of the program following the completion of the project supported by ACTION funds.
10. While specific levels of matching-funds are not a requirement for grants,

evidence of local public and private sector support (financial and in-kind) is strongly encouraged and will be considered in the decision-making process. Applicants capable of such contributions should specify the sources and nature of in-kind and other non-federal contributions. These contributions must be deemed allowable costs in accordance with ACTION requirements.

E. Application Review Process. ACTION's Demonstration Grants Division, in the Office of Voluntarism Initiatives, which has expertise in volunteer demonstration programs, will review and evaluate all eligible applications submitted under this announcement. ACTION's Associate Director for the Office of Voluntarism Initiatives will make the final selection from among the highest ranked applications. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

F. Application Submission and Deadline. One signed original and two copies of all completed applications must be submitted to the Associate Director for the Office of Voluntarism Initiatives, Room M516, 806 Connecticut Avenue, NW., Washington, DC 20525. The deadline for receipt of applications is June 16, 1986. Only those applications received by 5:00 p.m. EST on this date will be eligible.

All grant applications must consist of:

- a. Application for Federal Assistance (SF 424 pages 1-2; and ACTION Form A-1017 pages 3-7) with a narrative budget justification and a narrative of project goals and objectives.
- b. CPA certification of accounting capability.
- c. Articles of incorporation.
- d. Proof of non-profit status or an application for non-profit status which should be made through documentation.
- e. Resume of candidates for the position of project director, if available, or the resume of the director of the applicant agency or project.
- f. Organization chart of the applicant organization showing how the project is related to the organization.

To receive an application form, please call ACTION's Office of Voluntarism Initiatives, (202) 634-9749.

Signed in Washington, DC on May 2, 1986.

Donna M. Alvarado,
Director of ACTION.

[FR Doc. 86-10688 Filed 5-12-86; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Housing Preservation Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The final regulations for the HPG program are published elsewhere in this issue of the *Federal Register* and the program is effective in thirty days. In order to give applicants the greatest length of time to prepare applications, without unduly delaying the funding of housing preservation projects, FmHA hereby announces that it will receive applications from the effective date of the regulations and for 45 days thereafter July 28, 1986.

DATE: The closing date for preapplications is July 28, 1986. Preapplications must be received by or postmarked on or before this date.

ADDRESS: Submission of preapplications will be to FmHA field offices; interested applicants must contact their State FmHA office for this information.

FOR FURTHER INFORMATION CONTACT: John H. Pentecost, Senior Loan Officer, Multifamily Housing Processing Division, FmHA, USDA, Room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 382-8983.

SUPPLEMENTARY INFORMATION: The regulations contained in 7 CFR Part 1944, Subpart N provide details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact their State office of the Farmers Home Administration to receive further information and copies of the application package. Eligible entities for these competitively awarded grants include state and local governments, non-profit organizations, and consortia of eligible applicants.

The funding instrument for the housing preservation grant program will be a grant agreement. The term of the grants can vary from one to two years, depending on available funds. No maximum or minimum grant levels have been set, although the Agency anticipates that funding constraint and resources available to most states will require grants to range from \$150,000 to \$300,000 for a two-year proposal. \$19,140,000 is available and has been distributed on an allocation formula to states pursuant to 7 CFR Part 1940,

Subpart L, Methodology and Formulas for Allocation of Loan and Grant Program Funds.

Applications will be reviewed and rated on the project selection criteria contained in the regulation for the program. Decision on funding will be based on preapplications and notice of action on preapplications should be made within 60 days of the closing date.

Dated: April 15, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86-10585 Filed 5-12-86; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

[Docket No. 5664-01]

Noron S.A., Respondent; Order Vacating Temporary Denial Order

By a Temporary Denial Order issued May 17, 1985, 50 FR. 21482 (May 24, 1985), upon request of the U.S. Department of Commerce, the following Respondent was temporarily denied all privileges of participating in any manner of capacity in the export of reexport of U.S.-origin commodities or technical data: Noron S.A., 40 Avenue de Broqueville, 1200 Brussels, Belgium.

The Temporary Denial Order extended its denial provisions also, because of a relationship to Noron S.A., to the following three related persons: Claude Seront, Managing Director, Noron S.A., 40 Avenue de Broqueville, 1200 Brussels, Belgium; Herman Noe, Director, Noron S.A., 40 Avenue de Broqueville, 1200 Brussels, Belgium; FMO Taco Impex S.A., Via Lact. Olgiati 2.3, Quartiere Sagitariario, OH 6512 Guibiasco, Switzerland.

The Department of Commerce has now moved to vacate the Temporary Denial Order. Based on the representations made by the Department, I conclude that the Temporary Denial Order is no longer required in the public interest to permit completion of an investigation Act of 1979 (50 U.S.C. app. 2401-2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985), or to facilitate enforcement of the Export Administration Regulations (15 CFR Parts 368-399 (1985)).

Accordingly, it is hereby Ordered that, effective immediately, the May 17, 1985 Temporary Denial Order is vacated.

A copy of this Order Vacating the Temporary Denial Order shall be

published in the *Federal Register* and served upon the Respondent and upon each of the above three named related persons.

Dated: May 8, 1986.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 86-10742 Filed 5-12-86; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket No. 15-86]

Foreign-Trade Zone 90, Onondaga County, New York Syracuse Customs Port of Entry; Application for Subzone Chrysler Transmission Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Syracuse, New York, grantee of Foreign-Trade Zone 90, requesting special-purpose subzone status for the transmission manufacturing plant of Chrysler Corporation in Onondaga County, New York, adjacent to the Syracuse Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 2, 1986.

The Chrysler plant is located on a 129-acre site at 6600 Chrysler Drive, in the Town of Dewitt in the East Syracuse area. The facility, operated by the company's New Process Gear Division, is used to manufacture and distribute manual transmissions, employing some 3,000 persons. Approximately 1 to 2 percent of the components used are purchased from abroad, including cases, bearings, gears, and synchromesh rings. Some complete transmissions and transaxles are imported. The finished products are shipped mainly to Chrysler vehicle assembly plants.

Zone procedures would exempt Chrysler from Customs duties on the foreign material that is reexported. On products shipped to U.S. auto assembly plants with subzone status, the company would be able to take advantage of the same duty rate available to importers of complete automobiles. The rate on the transmission components ranges from 3 to 11 percent, whereas the rate on autos is 2.6 percent. The savings will help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli

(Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer St., Boston, MA 02110; and Colonel Daniel R. Clark, District Engineer, U.S. Army Engineer District Buffalo, 1776 Niagara St., Buffalo, NY 14207.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before June 12, 1986.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Federal Bldg., Rm 1219, 100 South Clinton St., Syracuse, New York 13260

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Rm 1529, 14th and Pennsylvania NW., Washington, DC 20230

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-10743 Filed 5-12-86; 8:45 am]

BILLING CODE 3510-DS-M

Nation Oceanic and Atmospheric Administration

Marine Mammals; Permit Modification; Northwest and Alaska Fisheries Center; Modification No. 2 to Permit No. 464

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 464 issued to the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Sections B.9 to B.13 are added:

"9. A pre-Ketamine intramuscular injection of atropine sulfate at a dose rate of 0.01 mg/kg may be used to inhibit hyper-secretion of fluid in the lungs. An intravenous injection of 2.5-5.0 mg/kg of Doxapram HCL may be used to chemically stimulate respiration.

10. Prior to initiation activities using the requested drugs, the permittee shall consult with such experts as appropriate in order to review and evaluate the drug immobilization program as previously conducted. Such evaluation should include exploration of any other factors which possibly may have contributed to the deaths of four animals in April of 1985, such as time of day, whether the animals were molting, had been chased in the capture attempt or were in a stressed

condition as a result of other causes. In this regard, it was noted that use of a "restraining bag" can cause stress and overheating and may impair an animal's ability to breathe. Therefore, if a restraining bag must be used, it should be used for the shortest possible time and be designed to assure that the animal has adequate ventilation.

11. If, based upon the results of the evaluation required by Special Condition B.10, experimentation with the requested drugs is still determined to be desirable, the permittee shall obtain expert guidance in developing a program for their use and arrange for an experienced veterinarian or other scientist with expertise in drug immobilization to be present during the proposed activities, at least until effective dosages and techniques are developed, and that vital signs of drugged animals be carefully monitored to identify possible life threatening situations at the earliest possible time. In this regard, it is understood that atropine can be expected, among other things to eliminate an animal's dive reflex for between 4-6 hours. Therefore you are required to make the appropriate arrangements for ensuring that animals injected with atropine will not enter the water during this time, as well as to ensure that the animal's dive reflex is functioning normally at time of release;

12. If another animal dies in the course of drug immobilization activities or adverse side effects are observed those activities shall be suspended until the drug combination, dosage, and procedures have been reviewed and, if necessary, revised to the satisfaction of the Service; and

13. A detailed summary of the experience with the requested drugs, if utilized, shall be included in the annual report required by Special Condition B.5 under the permit."

This modification became effective on May 2, 1986.

The Permit, as modified, is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: May 6, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-10701 Filed 5-12-86; 8:45 am]

BILLING CODE 3510-22-M

National Advisory Committee Oceans and Atmosphere; Meeting

May 8, 1986.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting Monday and Tuesday, June 2-3, 1986. The meeting will be held at the Herbert C. Hoover Building, 14th & Constitution Avenue NW., Washington, DC. The meeting will commence at 9:00 a.m. and end at 5:30 p.m. on Monday and commence at 8:30 a.m. and end at 3:30 p.m. on Tuesday.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments was established by Congress by Pub. L. 95-63 on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The tentative agenda is as follows:

Monday, June 2, 1986

Herbert C. Hoover Building, 14th Street NW. between E St. and Constitution Avenue NW., Rooms 4830 and 6802, Washington, DC

9:00 a.m.-12:30 p.m.

Plenary

Room 4830

9:00 a.m.-9:30 a.m.

- Announcements

9:30 a.m.-12:30 p.m.

Panel Meeting

- Data Classification

Chairman: John E. Flipse

Room 4830

Topic: Classification of Multibeam Bathymetric Data

Speakers:

RADM John Bossler National Ocean Service, National Oceanic & Atmospheric Administration

Richard Greenwald, Deep Sea Ventures

James Baker, President, Joint Oceanographic Institutions
TBA, National Ocean Industries Association

12:30 p.m.-1:30 p.m.

Lunch

1:30-5:30 p.m.

Panel Meetings

1:30 p.m.-3:30 p.m.

- Panel 3: Roles and Missions of the National Environmental Satellite, Data, and Information Service/Office of Oceanic and Atmospheric Research Room 6802

Topic: Data Management

Speaker: None

3:30 p.m.-5:30 p.m.

- Panel 3: Roles and Missions of the National Environmental Satellite, Data, and Information Service/Office of Oceanic and Atmospheric Research Room 6802

Topic: Research Administration

Speaker: Vernon Derr, Director, Environmental Research Laboratories, National Oceanic & Atmospheric Administration

1:30 p.m.-5:30 p.m.

- Panel 1: Roles and Missions of the National Ocean Service/National Marine Fisheries Service, Room 4830

Topic: Panel Work Session

Speakers: None

5:30 p.m.

Recess**Tuesday, June 3, 1986**

Herbert C. Hoover Building, 14th Street NW. between E Street and Constitution Avenue NW., Rooms 4830 and 6802, Washington, DC

8:30 a.m.-9:30 a.m.

Panel Meeting

- Panel 2 and Panel 3: Roles and Missions of the National Weather Service/National Environmental Satellite, Data, and Information Service, Room 4830

Topic: Panel Work Session

Speakers: None

9:30 a.m.-12:00 Noon

Plenary

- Discussion of NOAA Study

12:00 Noon-1:00 p.m.

Lunch

1:00 p.m.-3:30 p.m.

Plenary

- Old Business
- Panel Reports
- Data Classification Position Statement
- Discussion of Future Study Topics
- New Business

3:30 p.m.

Adjourn.

The public is welcome at the sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after such each session.

Additional information concerning these meetings may be obtained through the Committee's Acting Executive Director, Amor L. Lane, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street NW., Page Building #1, Suite 438, Washington, DC 20235. The telephone number is 202/653-7818.

Dated: May 8, 1986.

Amor L. Lane,

Acting Executive Director.

[FR Doc. 86-10762 Filed 5-12-86; 8:45 am]

BILLING CODE 3510-12-M

National Technical Information Service**Intent to Grant Exclusive Patent License**

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Roberts Laboratories, Inc., having a place of business at 230 Half Mile Road, Red Bank, New Jersey, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "4-Carboxyphthalato-(1,2-Diaminohexane) Platinum II and Salts Thereof," U.S. Patent 4,137,248. The U.S. and foreign patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Dr. David Mowry, Office of Federal Patent

Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-10717 Filed 5-12-86; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 29 May 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Colonel Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on intelligence support systems.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

8 May, 1986.

[FR Doc. 86-10685 Filed 5-12-86; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; New Record Systems

AGENCY: Office of the Secretary, Defense (DOD).

ACTION: Notice of two new systems of records subject to the Privacy Act.

SUMMARY: The Office of the Secretary of Defense is adding two new systems of records to its existing inventory of records systems subject to the Privacy Act as amended. (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice on or before June 12, 1986, unless comments

are received which would result in a contrary determination.

ADDRESS: Send any comments to the System Manager identified in the particular record system notice.

FOR FURTHER INFORMATION CONTACT: Norma Cook, Privacy Act Officer, ODASD(A), Room 5C-315, The Pentagon, Washington, DC 20301. Telephone: (202) 695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 have been published in the Federal Register as follows:

FR Doc. 85-10237 (50 FR 22286) May 29, 1985

FR Doc. 85-27008 (50 FR 47087) November 14, 1985

FR Doc. 85-7574 (50 FR 11803) April 7, 1986

The two new record systems identified are DWHS P40, entitled: Classified Information Nondisclosure Agreement (NDA) and DUSDP 05, entitled: Defense Automated Case Review System (DACRS). A new system report for these systems as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on April 4, 1986, pursuant to Paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 8, 1986.

DWHS P40

SYSTEM NAME:

Classified Information Nondisclosure Agreement (NDA).

SYSTEM LOCATION:

Chief, Personnel Security Division, Directorate for Personnel & Security, Washington Headquarters Services, Pentagon, Washington, DC 20301-1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Office of the Secretary of Defense assigned to sensitive positions who are authorized access to classified information.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains originals of SF 189, Classified Information Nondisclosure Agreements, signed by Office Secretary of Defense employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12356; sections 641, 793, 794, 798 and 952 of Title 18, U.S. Code; section 783(b) of Title 50, U.S.

Code, and Intelligence Identities Protection Act of 1982.

PURPOSE(S):

To maintain a record of signed Standard Forms 189 which are used as a condition precedent to authorizing individuals access to classified information. The use of the form will enhance the protection of national security information and/or will reduce the costs associated with its protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS, USES, AND THE PURPOSE OF SUCH USES:

See blanket routine uses.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by surname of individual.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly cleared and trained and who require access in connection with their official duties. Records are stored in locked filing cabinets after normal business hours.

RETENTION AND DISPOSAL:

Records are retained for 50 years from date of signature and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Security Division, Directorate For Personnel & Security, Washington Headquarters Services, Room 3B347, Pentagon, Washington, DC 20301-1155.

NOTIFICATION PROCEDURE:

Information may be obtained from Directorate for Personnel and Security, Washington Headquarters Services, Room 3B437, Pentagon, Washington, DC 20301-1155. Telephone: (202) 697-4573.

RECORDS ACCESS PROCEDURES:

Request from individuals should be addressed to the above System Manager.

Written requests for information should contain full name of the individual, current address, and telephone number and current business address.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license or employing office identification card.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286(b) and OSD Administrative Instruction No. 81.

RECORDS SOURCE CATEGORIES:

Data maintained in the system is received from individuals who have executed a Classified Information Nondisclosure agreement (SF 189).

SYSTEMS EXEMPTED FROM CERTAIN INFORMATION OF THE ACT:

None.

DUSDP 05**SYSTEM NAME:**

Defense Automated Case Review System (DACRS).

SYSTEM LOCATION:

Office of the Under Secretary of Defense (Policy), The Pentagon, Washington, DC 20301-2000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Export license applicants and intermediate and ultimate consignees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Export license applications, names and addresses of applicants and consignees, classified intelligence reports on foreign consignees and activities, proprietary business information, credit reports, product description, technical evaluation of commodities and technology, and Department of Defense recommendations to Department of Commerce on case dispositions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 5 and section 10(g) of the Export Administration Act of 1979.

PURPOSE(S):

To permit the Under Secretary of Defense (Policy) (DUSD(P)) to fulfill Presidentially mandated requirements to expeditiously review and make recommendations to the Department of Commerce (DOC) on export license applications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Used by the Office of the Secretary of Defense (OSD) analysts to prepare Department of Defense (DoD) positions and recommendations on export license applications. Users include policy and technical analysts, supervisory personnel up to and including Deputy Under Secretary of Defense (Policy)/

Defense Technology Security Administration (DTSA) in DoD. Information shared with strategic trade analysts and supervisors in Department of State (DOS), and DOC and Customs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper records in file folders; computer magnetic tape disks, microfiche and microfilm in secure computer facility.

RETRIEVABILITY:

Files are retrieved by case number, applicant, purchaser, consignee, commodity, and proposed end use.

SAFEGUARDS:

All files in this system are protected by limited, controlled access and locked doors. Only professional and/or research staff with appropriate security clearances are given access to files.

RETENTION AND DISPOSAL:

Files will be maintained and updated as long as DoD export control review program continues.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Under Secretary for Trade Security Policy Director, Counterintelligence and Security Policy Office of the Under Secretary of Defense (Policy) The Pentagon, Washington, DC 20301-2000.

NOTIFICATION PROCEDURE:

Unclassified, non-proprietary information may be obtained by written request to the system manager giving full name and residence. Identity verification may be required. Status of active export license applications may be obtained by accessing DoD Export License Status Advisor (ELISA) remote electronic bulletin board, (202) 697-6109.

RECORD ACCESS PROCEDURES:

See Notification Procedure above.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting content and appealing initial determinations by the individual concerned are contained in OSD Administrative Instruction No. 81 (32 CFR Part 286b).

RECORD SOURCE CATEGORIES:

Information is obtained from various federal government agencies and civilian entities.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86-10687 Filed 5-12-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow-on Forces Attack; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Follow-up Forces Attack will meet in closed session on June 26-27, August 7-8, and September 18-19, 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to examine the technical and programmatic aspects as well as conceptual applications of the capabilities and systems to accomplish attacking follow-on forces.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

*OSD Federal Register Liaison Officer,
Department of Defense.*

8 May, 1986.

[FR, Doc. 86-10686 Filed 5-12-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force**Determinations of Active Military Service and Discharge, Civilian or Contractual Personnel**

Under the provisions of section 401 of Pub. L. 95-202 and DOD Directive 1000.20, "Determinations of Active Military Service and Discharge: Civilian or Contractual Personnel," the Secretary of the Air Force, acting in accordance with authority delegated by the Secretary of the Defense, determined on April 28, 1986, that the service of the group known as "Personnel Who Served Aboard Coast and Geodetic Survey Vessels during World War II" shall not be considered active military service in the Armed Forces of the United States for all laws administered by the Veterans Administration.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Michael Dandar or Lt. Col. Mary Todd: (202) 692-4744 Office of the Secretary of the Air Force Personnel

Council (SAF/MIPC), the Pentagon, Washington, DC 20330-1440.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-10661 Filed 5-12-86; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 5, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Appropriate Air Force Technology efforts to Complement the Strategic Defense Initiative Program will meet at the Pentagon, Washington, DC, on June 2, 1986, from 8:30 am to 5:00 pm and on June 3, 1986, from 8:00 am to 3:00 pm.

The purpose of the meeting will be for the Battle Management/C³ (BM/C³) Subpanel to hold classified panel discussions and begin preliminary report writing.

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 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-10665 Filed 5-12-86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Military Traffic Management Command, Directorate of Personal Property; International Program

AGENCY: Military Traffic Management Command (MTMC), Army Department, Defense.

ACTION: Notice of the continued solicitation for movement of international commercial air unaccompanied baggage (UB) and household good (HHG) under the Direct Procurement Method (DPM). The DPM commercial air solicitation was first announced in Volume 49 *Federal Register* dated October 3, 1984.

SUMMARY: The third six-month cycle for the worldwide movement of DPM UB and HHG via commercial air will be effective October 1, 1986. The solicitation package for the October rate cycle will be distributed in June, 1986. Those carriers not already participating, but wish to do so, must notify MTMC by May 30, 1986 to receive copies of the solicitation. The system has been

automated and rates must be submitted via magnetic tape.

The air freight forwarders/carriers submitting the most favorable offer will be awarded all traffic moving via DPM commercial air, between the origin/destination points. Estimated tonnages will be provided. However, there is no guarantee that any tonnage will move under this solicitation. The Government reserves the right to use any method of shipment, i.e. DPM MAC, Code J, or Code 8.

FOR FURTHER INFORMATION CONTACT: Ms. Eunice Anderson or Mrs. Naomi King, HQ, Military Traffic Management Command, ATTN: MT-ppc (Room 408), 5611 Columbia Pike, Falls Church, Virginia 22041-5050 (202) 756-2385.

Joseph R. Marotta,

Colonel, GS Director of Personal Property

[FR Doc. 86-10678 Filed 5-12-86; 8:45 am]

BILLING CODE 3712-08-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Application Notice for New Awards Under the National Diffusion Network Program for FY 1986

AGENCY: Department of Education.

ACTION: Application Notice for New Awards under the National Diffusion Network Program for Fiscal Year 1986.

Programmatic and Fiscal Information

Applications are invited for new Developer Demonstrator projects under the National Diffusion Network (NDN) program for fiscal year 1986.

The purpose of the program is to promote the widespread use across the Nation of rigorously evaluated, exemplary educational programs. Developer Demonstrator projects disseminate exemplary educational programs nationwide. No funds are available for program development.

Eligible applicants are: any public or nonprofit private agency, organization or institution that has developed a program that has current approval or recertification from the Department of Education's Joint Dissemination Review Panel, and that is available for visitation.

Taking into account unmet national needs, the Secretary has selected priorities for this competition from the list of priorities at § 796.15. (See the Notice of Proposed Rulemaking for the NDN published in this issue of the *Federal Register* containing amendments to this section of the NDN regulations.)

Projects are selected for funding by a separate competition in each priority area. Only applications for projects in these priority areas will be considered.

The Secretary seeks applications for projects in the following priority areas:

1. Programs that assist in improving school discipline and that foster an atmosphere conducive to learning.
2. History, geography and civics, including special history programs in conjunction with the bicentennial of the Constitution of the United States.
3. Character and ethics.
4. English, including literature.
5. Mathematics. This priority is limited to programs for middle school and secondary school instructional levels.
6. Science.
7. Reading for the secondary school instructional level. The Secretary also invites applications for projects that use phonics methods to teach reading at any instructional level. However, these applications will not receive a competitive advantage over other applications in this priority.
8. Programs that improve students' skills in comprehension, analysis, and problem solving, including programs in philosophy.
9. Written communication.
10. Computer science.
11. Foreign languages.
12. Educational leadership.
13. Programs that improve teaching and the quality of instruction.
14. Early childhood and elementary school instructional levels.
15. Gifted and talented students.
16. Socioeconomically disadvantaged students.
17. Dissemination processes in any of the above topics.

However, this listing of priorities does not bind the Department of Education to a specific number of projects in each priority, or to selecting projects for funding in every priority.

Available Fund

The estimated amount available for new awards will be \$900,000. The average award will be approximately \$55,000. It is estimated that sixteen (16) new projects will be funded.

It is expected that new Developer Demonstrator awards will be for a project period not to exceed four years, contingent on satisfaction of the standards of the Education Department General Administrative Regulations (EDGAR) § 75.253.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is

otherwise specified by statute or regulations

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand-delivered on or before July 1, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.073 A, 400 Maryland Avenue, SW., Washington, DC 20202.

Each late applicant will be notified that its application will not be considered.

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing the National Diffusion Network Program, in 34 CFR Part 796. However, a Notice of Proposed Rulemaking (NPRM) amending the National Diffusion Network program regulations is published in this issue of the *Federal Register*. Applicants should prepare their applications based on the NPRM. If any substantive changes are made in the final regulations that would affect the content of applications, applicants will be given an opportunity to revise or resubmit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (except for § 75.650), 77, 78 and 79.

Intergovernmental Review

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

Immediately upon receipt of this notice, potential applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform

activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. However, for this program, if the specific States in which the applicant's exemplary educational program may be used have not been determined, this requirement need not be satisfied. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by September 1, 1986 to the following address:

The Secretary, U.S. Department of Education, Room 4181, CFDA No. 84.073 A, 400 Maryland Avenue, SW., Washington, DC 20202.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Application Forms

Application forms and program information packages are expected to be available by May 16, 1986 and may be obtained by writing to the National Diffusion Network, U.S. Department of Education, 555 New Jersey Avenue NW., Room 508 A, Washington DC 20208.

Further Information: For further information contact Mrs. Anne M. Barnes, Education Program Specialist, National Diffusion Network, U.S. Department of Education, 555 New Jersey Avenue NW., Room 508 A, Washington DC 20208. Telephone: (202) 357-6149.

Program Authority: 20 U.S.C. 3851.

(Catalog of Federal Domestic Assistance Number 84.073 A, National Diffusion Network Program)

Dated: May 8, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-10728 Filed 5-12-86; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on August 1, 1985, an arbitration panel rendered a decision in the matter of Jean E. (Petrali) Rudolph, vendor vs. California Department of Rehabilitation, Business Enterprise Program, state licensing agency (Docket No. R-S/83-1). This panel was convened by the Secretary of the Department of Education pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioner Jean E. (Petrali) Rudolph on May 23, 1983. Under this section of the Act, a blind licensee dissatisfied with the State's operation or administration of the vending facility program may request a full evidentiary hearing from the State Licensing Agency. If the licensee is dissatisfied with the State agency decision, the licensee may complain to the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: Elizabeth Arroyo, Acting Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Services, Room 3232, Mary E. Switzer Building, Department of Education, 330 C Street SW., Washington, DC 20202, Area Code (202) 732-1303 or TTY (202) 732-1298. The full text of the arbitration panel decision can be obtained from this source.

Dated: May 8, 1986.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

Arbitration Panel Decision

A blind vendor, Jean E. (Petrali) Rudolph, grieved a determination by the State of California, Department of Rehabilitation, State Licensing Agency (SLA) to reject her vendor's application to operate a cafeteria in a Department of Agriculture Building. The SLA refused to consider the vendor as a candidate to operate the vending facility on grounds that the vendor had not operated her previously assigned vending facility for at least six months.

The vendor argued that the Business Enterprise Program had represented to her that the six month period would run from the date she was assigned to the prior facility and not the date she actually commenced operations.

Ms. Rudolph retained counsel and pursued her grievance consistent with the procedural requirements of the Randolph-Sheppard Act at 20 U.S.C. 107 *et. seq.* and the Department's revised Interim Policies and Procedures for

Randolph-Sheppard Arbitrations, On the date of the scheduled hearing, and prior to the scheduled commencement of the hearing itself, the parties agreed upon a stipulated settlement and award which was accepted by the Arbitration Panel.

In accordance with this settlement and award, the vendor was entitled to apply for any dry vending concession operated by the California Department of Rehabilitation Business Enterprise Program within the Sacramento area during a two year period beginning August 1, 1985, provided such application is timely. If the vendor timely applies, she will automatically be placed in the final grouping of applicants for the concessions without displacing any other qualified applicant. Robertson, W.A., Ford, T. E. and LaRocco, J. B. (Chairperson).

Arbitration panel decisions do not necessarily represent the views of the Department of Education.

[FR Doc. 86-10733 Filed 5-12-86; 8:45 am]

BILLING CODE 4000-01-M

Proposed Annual Funding Priorities for Fiscal Year 1986—Projects With Industry; Withdrawal

AGENCY: Department of Education.

ACTION: Withdrawal Notice.

SUMMARY: A notice of proposed annual funding priorities for fiscal year 1986 for the Projects With Industry Program was published on October 9, 1985 at 50 FR 41186.

Subsequently, the Congress inserted language into the appropriation legislation for fiscal year 1986 (Pub. L. 99-178) requiring that funds appropriated for the Projects With Industry Program be used to assist only those projects funded in fiscal year 1985. This mandate prohibits the funding of new projects in fiscal year 1986 and therefore new funding priorities are unnecessary. This notice is withdrawn.

FOR FURTHER INFORMATION CONTACT:

Art Cox, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3320, Mary E. Switzer Building, MS-2304, Washington, DC 20202. Telephone: (202) 732-1333.

Program Authority: 20 U.S.C. 795g. (Catalog of Federal Domestic Assistance No. 84-128B; Projects With Industry Program)

Dated: May 8, 1986.

William J. Bennett

Secretary of Education

[FR Doc. 86-10730 Filed 5-12-86; 8:45 am]

BILLING CODE 4000-01-M

Application Notice for New Awards Under Projects for Initiating Special Recreation Programs for Handicapped Individuals for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Application notice for new awards under projects for initiating special recreation programs for handicapped individuals for fiscal year 1986.

Programmatic and Fiscal Information

Applications for new projects are invited under the program for Projects for Initiating Special Recreation Programs for Handicapped Individuals.

The purpose of this program is to support projects which initiate recreational service programs for handicapped individuals. Most handicapped individuals served in projects supported under this program are receiving vocational rehabilitation services from State vocational rehabilitation agencies.

Awards are made under this program to State and other public and non-profit agencies and organizations.

Up to seventy-five percent of fiscal year 1986 funds available for new projects under this program is being reserved by the Secretary for applications responsive to a funding priority designed to integrate recreational activities for the handicapped with those for non-handicapped individuals. A full description of this funding priority is contained in the Notice of Final Funding Priority for fiscal year 1986 which is published in this issue of the **Federal Register**. The remaining twenty-five percent of available funds under this program will be used to support new projects that are not responsive to the funding priority.

The total amount of funds awarded under this grant program in fiscal year 1985 was \$2,100,000. Although the fiscal year 1986 appropriation is \$2,200,000, mandatory reductions required by Pub. L. 99-177 have reduced the amount available for this program to \$2,105,000. The Administration has requested a rescission of all these funds. Nevertheless, this notice is being published in order not to further delay the application receipt, review and award process, in the event that the rescission request is denied. If there is a rescission of all funds for this program, a cancellation notice will be published in the **Federal Register**. If the program is funded, the range of funded projects would be from \$50,000 to \$90,000 with the average projects being about \$70,000. About 30 new projects would be awarded.

It is expected that any new projects funded under this program in fiscal year 1986 would be approved for project periods of up to 12 months.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before July 11, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.128J, 400 Maryland Avenue SW., Washington, DC 20202.

Each late applicant will be notified that its application will not be considered.

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC, time) daily, except Saturdays, Sundays and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing Projects for Initiating Special Recreation Programs for Handicapped Individuals in 34 CFR Parts 369 and 378; and

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77 and 78.

Application Forms

Application forms and program information packages are available. These may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., Room 3332, Mary E. Switzer Building, MS-2312, Washington, DC 20202. Telephone: (202) 732-1343.

Further Information

For further information contact Frank S. Caracciolo, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3327, Mary E. Switzer Building,

MS-2312, Washington, DC 20202.
Telephone: (202) 732-1340.

Program Authority: (29 U.S.C. 777f).
(Catalog of Federal Domestic Assistance No. 84.128, Vocational Rehabilitation Service Projects)

Dated: May 8, 1986.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 86-10732 Filed 5-12-86; 8:45 am]

BILLING CODE 4000-01-M

Application Notice for Noncompeting Continuation Awards Under the Projects With Industry Program for FY 1986

AGENCY: Department of Education.

ACTION: Application notice for noncompeting continuation awards under the projects with industry program for fiscal year 1986.

Programmatic and Fiscal Information

The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and the closing date for transmittal of noncompeting continuation applications under the Projects With Industry program. Awards are made under this program to provide handicapped individuals with training and employment in a realistic work setting in order to prepare them for competitive employment. In addition, these projects provide supportive services as required to maintain the handicapped individual's employment. Projects also provide other services to the handicapped including (a) the development and modification of jobs to accommodate the special needs of such individuals, (b) the distribution of special aids, appliances, or adapted equipment, (c) the establishment of appropriate job placement services, and (d) the modification of facilities or equipment of the employer that are to be used by handicapped individuals.

The Appropriations Act of 1986 (Pub. L. 99-178) states that funds appropriated for this program can only be used to assist grantees that received grant awards in fiscal year 1985. Accordingly, the only eligible applicants for noncompeting continuation awards in fiscal year 1986 are those grantees which received funding under this program in fiscal year 1985. Grants will be awarded to eligible applicants unless the Commissioner of the Rehabilitation Services Administration determines that there is a substantial failure to comply with the provisions of the grantee's approved application.

In fiscal year 1985, \$14,400,000 was available under the Projects With Industry Program to fund 98 existing projects; approximately \$1,400,000 of this amount was used to extend through September 30, 1986, many projects which required funding for more than the 12 months of support normally provided under this grant program. The fiscal year 1986 appropriation is \$15.2 million; however, mandatory reductions required by Pub. L. 99-177 have reduced the amount available for this program to \$14.5 million.

Closing Date for Transmittal of Applications

Applications for noncompeting continuation awards must be mailed or hand-delivered on or before June 16, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.128B, 400 Maryland Avenue SW., Washington, DC 20202.

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC, time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

- (a) The regulations governing Projects With Industry program in 34 CFR Part 369 and 379; and
- (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77 and 78.

Application Forms

Application forms and program information packages will be mailed to each eligible applicant.

Further Information

For further information contact Art Cox, Office of Development Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., Room 3320, Mary E. Switzer Building, MS-2304, Washington, DC 20202. Telephone: (202) 732-1333.

Program Authority: (29 U.S.C. 795g).

(Catalog of Federal Domestic Assistance No. 84.128, Vocational Rehabilitation Service Projects)

Dated: May 8, 1986.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 86-10734 Filed 5-12-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Dose Assessment Advisory Group (DAAG); Cancellation of Meeting

This notice is given to advise of the cancellation of the meeting of the Dose Assessment Advisory Group (DAAG) on May 28, 29, and 30, 1986, as published in the *Federal Register* on 5-2-86 (51 FR 16372).

Issued at Washington, DC on May 8, 1986.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 86-10692 Filed 5-2-86; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Historical Factors Task Group; Meeting

Notice is hereby given that the Historical Factors Task Group will meet in May 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Historical Factors Task is responsible for the identification and analysis of events, governmental policies, and actions (federal, state, and local), and the reactions of the oil and gas industries to such events, policies and actions (i.e., the "factors") that affect the supply of and demand for oil and gas in the U.S. since the end of World War II.

The Historical Factors Task Group will hold its second meeting on May 22, 1986, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street NW., Washington, DC.

The tentative agenda for the Historical Factors Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss the factors affecting the industry from World War II until 1975.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Historical Factors Task Group is empowered to conduct the meeting in a fashion that will, in his

judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Historical Factors Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 7, 1986.
Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.
[FR Doc. 86-10690 Filed 5-12-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration Changes to DOE Energy Information Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of changes to the inventory of energy information reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives the notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511), for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the Office of Management and Administration, are no longer included in these notices.

During the second quarter of fiscal year 1986 (January 1, 1986 through March 31, 1986), changes were made to the October 1, 1985 inventory of DOE information collections, which was published in the *Federal Register*, 50 FR 50938 (December 13, 1985). Changes made during the first quarter were published in the *Federal Register*, 51 FR 5756 (February 18, 1986). The changes are listed below, and include new information collection approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement,

requirement extension, or requirement reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR INFORMATION CONTACT: Joyce Beattie, EI-73, Energy Information Administration, Mail Stop 1H-023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2313.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI-22, Forrestal Buildings, U.S. Department of Energy, Washington, DC 20585 (202) 252-8600.

Issued in Washington, DC, May 7, 1986.

H. A. Merklein,
Administrator, Energy Information Administration.

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

DOE No.	Title	OMB control No.	Expiration date	CFR citation
FERC-588 ¹	Emergency Natural Gas Sale, Transportation and Exchange Transactions.....	19020144	03/31/89	
Energy Information Administration				
EIA-870	Natural Gas Compression Costs Survey.....	19050170	05/31/86	
Federal Energy Regulatory Commission				
FERC-587 ¹	Indexes of Essential Power Site Withdrawals.....	19020143	12/31/86	

¹ Does not use a structured form.

DOE ENERGY INFORMATION COLLECTIONS EXTENDED

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Federal Energy Regulatory Commission				
FERC-519 ¹	Electric Rates—Corporate Applications.....	19020082	03/31/89	18 CFR 33.
FERC-525 ¹	Financial Audit.....	19020082	06/30/86	18 CFR 101, 201.
FERC-534 ¹	Applications for Production Related Costs.....	19020057	03/31/89	18 CFR 270.203, 271.1103-1105.
FERC-542 ¹	PGA Audits/Initial Rate/Rate Change and Tracking.....	19020070	02/28/87	18 CFR 154.61-65, 154.91.
FERC-550 ¹	Oil Pipeline: Tariff Filings.....	19020089	08/31/86	18 CFR 341-346.
FERC-576 ¹	Report On Service Interruptions On Pipeline Systems.....	19020064	06/30/86	18 CFR 260.9.

¹ Does not use a structured form.

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

DOE No.	Title	OMB control	Expiration date	CFR citation
None				

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

DOE No.	Title	OMB control	Discontinued date	CFR citation
None				

CHANGES IN CONTINUING DOE ENERGY INFORMATION COLLECTIONS

DOE numbers as previously listed	Changes
FPC-8 EIA-23 EIA-23P EIA-64	Changed prefix from FPC to FERC. EIA-23 was revised by deleting Schedule B. EIA-23P and EIA-64 were extensions without changes. All these forms are now approved through 12/31/88.
RW-859 FERC-516 ¹ FERC-531 ¹ FERC-537 ¹ FERC-568 ¹ FERC-580 ¹ FERC-583 ¹	Revision to form and instructions. Revision to reporting requirements.

¹ Does not use a structured form.

[FR Doc. 86-10689 Filed 5-12-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board;
Open Meeting

Notice is hereby given of the following meeting:

Name: Solid Earth Sciences Panel on the Energy Research Advisory Board.

Date and Time: June 2, 1986-8:30 a.m.-4:00 p.m.; June 3, 1986-8:00 a.m.-2:00 p.m.

Place: Sandia National Laboratory, Building 822, Conference Room A, 1515 Eubank Boulevard, Kirtland Air Force Base, Albuquerque, NM 87175.

Contact: William L. Woodard, Department of Energy, Office of Energy Research (ER-6), 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 252-5767.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The purpose of the Panel is to review the research and development programs of the Department of Energy involving the solid earth sciences, including such topics as basic research in continental structure, modeling enhanced oil recovery, and underground migration of chemicals. The Panel will also review the arrangements for coordination between industry, universities, and Federal agencies.

Tentative Agenda:

June 2, 1986

- Cooperative programs between DOE and State Governments
- Environmental research programs related to solid earth sciences
- Industry programs
- Public Comment—10 minute rule

June 3, 1986

- University programs in the solid earth sciences
- Manpower requirements
- Economic forecasts and relation to solid earth science support
- Public Comment—10 minute rule

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes of the Meeting: The minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on May 2, 1986.

Charles Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 86-10691 Filed 5-12-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory
Commission

[Docket Nos. CP86-427-000 et al.]

Natural Gas Certificate Filings; ANR
Pipeline Co. et al.

May 7, 1986

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP86-427-000]

Take notice that on April 9, 1986, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan

48243, filed a Docket No. CP86-427-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of gas for The Great Lakes Steel Division of National Steel Corporation (National Steel); all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR request authority to transport, on an interruptible basis, up to 69,000 dt equivalent of natural gas per day which National Steel would cause its seller(s) to tender to ANR for transport and delivery of the same for National Steel's account to Michigan Consolidated Gas Company (MichCon) at an interconnection of the facilities of ANR and MichCon in Washtenaw County, Michigan. ANR states that National Steel would pay ANR its transportation rate of 74.59 cents per dt equivalent of gas transported. ANR proposes to provide the subject service for an initial two-year term and such additional period as the parties shall determine. Upon termination of the service ANR requests pre-granted abandonment authority.

ANR further proposes to take receipt of quantities of gas from existing or new gas sellers for National Steel's account at additional points of receipt and to advise the Commission annually of the service modifications.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Pipeline Company Great Lakes
Gas Transportation Company

[Docket No. CP86-446-000]

Take notice that on April 15, 1986, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, and Great Lakes Gas Transmission (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226 (Applicants), filed in Docket No. CP86-446-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to provide a

gas transportation service for Consumers Power Company (Consumers) and incident thereto for Great Lakes to provide a transportation service for ANR for the benefit of Consumers, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR request authority to transport, on an interruptible basis, up to 125,000 dt equivalent of spot natural gas per day which Consumers would cause its seller(s) to tender ANR at various points in Oklahoma, Kansas, Texas, Louisiana and/or Emerson, Manitoba, Canada. For volumes tendered at Emerson, transportation on behalf of ANR of the Consumers' volumes would be provided as requested by Great Lakes. Great Lakes requests authorization to transport, on an interruptible basis, the gas and deliver the same to ANR at the existing interconnection of the systems of ANR and Great Lakes at Farwell, Michigan. ANR would provide further transportation for Consumers and deliver gas, adjusted for fuel use on ANR's system, to Consumers in Allegan County, Michigan, or for Consumer's account at the proposed point of interconnection of the systems of ANR and Washtenaw Pipeline Company (Washtenaw) in Washtenaw County Michigan.

ANR further proposes the following transportation rates to charge Consumers (cents per dt):

Receipt points	Delivery points	
	Washtenaw	Allegan
Oklahoma, Texas, and Kansas.....	44.0	39.2
Onshore Louisiana.....	38.8	42.7
Mansfield, Wisconsin.....	22.0	17.1
Farwell, Michigan.....	13.1	3.7

ANR would pay Great Lakes an appropriate rate, determined from an existing Rate Schedule T-4. ANR and Great Lakes propose to provide the subject service for an initial period of two years and such additional term as the parties shall determine.

ANR requests authority to construct a tap on its system in Washtenaw County, Michigan, to deliver the gas to Washtenaw on behalf of Consumers. ANR states that Washtenaw would reimburse ANR for construction costs, and would thereafter own the tap. ANR further states that the existing delivery point in Allegan County, Michigan, is currently authorized only for emergency situations. ANR proposes to utilize this delivery point as a regular delivery point for the proposed service.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Great Lakes Gas Transmission Company

[Docket No. CP86-456-000]

Take notice that on April 15, 1986, Great Lakes Gas Transmission Company, 2100 Buhl Building, Detroit, Michigan 48226 (Petitioner), filed in Docket No. CP86-456-000, a petition to amend the Commission's order issued June 10, 1981, in Docket No. CP79-462-000, *et al.* (15 FERC ¶ 61,254), pursuant to sections 7(b) and 7(c) of the Natural Gas Act so as to amend its existing transportation service for ANR Pipeline Company (ANR), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that pursuant to the June 10, 1981, order issued in Docket No. CP79-462-000, *et al.*, Great Lakes was authorized to transport up to 75,000 Mcf of imported natural gas per day to ANR commencing November 1, 1982, and to transport an amount equal to 75 percent, 50 percent and 25 percent of 75,000 Mcf of natural gas per day during the contract years beginning November 1, 1984, 1985 and 1986, respectively. The contract quantity under the existing authorization, it is stated, is zero for the contract year beginning November 1, 1987.

Petitioner states that pursuant to an amendment to the contract between Petitioner and ANR, the contract quantity would be reduced to zero on November 1, 1986, instead of November 1, 1987.

Petitioner proposes to amend two transportation agreements with TransCanada PipeLines Ltd. (TransCanada), under which TransCanada reduced its contract demand to allow equivalent quantities of natural gas to be transported on behalf of ANR and supplied Petitioner with the fuel and other company use gas necessary to provide the transportation service.

Comment date: May 28, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Midwestern Gas Transmission Company

[Docket No. CP86-442-000]

Take notice that on April 14, 1986, Midwestern Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-442-000 an application pursuant to section 7(c) of the Natural

Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Northern States Power Company (NSP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport 5,307 dt equivalent of gas on a firm basis for NSP by means of existing facilities on its northern system. Applicant states that NSP would deliver the gas to be transported at the existing interconnections between the facilities of Applicant and Northern Natural Gas Company, Division of InterNorth, Inc., at the North Branch meter station located in Chisago County, Minnesota, and the Cambridge meter station located in Isanti County, Minnesota, and at the Genola meter station located in Morrison County, Minnesota, and Applicant would transport the proposed volumes to NSP at the existing delivery points between Midwestern and NSP located near Grand Forks and Fargo, North Dakota.

Applicant further states that proposed service is in addition to the firm transportation service of 42,093 dt equivalent authorized in Docket No. RP83-73 on June 1, 1984, and being rendered pursuant to Rate Schedule T-9 of Applicant's FERC Gas Tariff, Original Volume No. 2. It is explained that the rates for such service, as filed in Docket No. RP86-33-000 and being collected subject to refund, are a monthly capacity charge of \$.96 per dt equivalent of gas and the effective non-gas commodity rate applicable to Rate Schedule CRL-2 equal to 13.11 cents per dt equivalent.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Mountain Fuel Resources, Inc.

[Docket No. CP86-457-000]

Take notice that on April 18, 1986, Mountain Fuel Resources, Inc. (MFR), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP86-457-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to install and operate metering and appurtenant facilities at MFR's Allied Chemical Corporation (Allied) and Covey's Little America (Little America) existing delivery points, both of which are located near Green River, Wyoming, under the certificate issued to MFR in Docket No. CP82-491-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request

which is on file with the Commission and open to the public inspection.

MFR states that the existing Allied and Little America delivery points serve Mountain Fuel Supply Company (MFSC), MFR's local distribution company affiliate, under Rate Schedules CD-1 and X-33 of MFR's FERC Gas Tariff, and that deliveries of natural gas made to MFSC at these points are not currently metered by MFR.

Consequently, MFR proposes to install one six-inch turbine meter and appurtenant facilities at the Allied delivery point and one 250 psig working-pressure positive-displacement meter and appurtenant facilities at the Little America delivery point, all in Sweetwater County, Wyoming.

It is stated that the proposed meter installations would be constructed immediately adjacent to existing facilities and would be located exclusively within the areas encompassed by the existing Little America and Allied delivery point rights-of-way.

Estimated costs for facilities at the Allied and Little America delivery points are stated to be \$44,000 and \$8,000, respectively.

MFR states that the installation of new meters and appurtenant facilities at the Allied and Little America delivery points would not limit MFR's ability to deliver to MFSC all volumes of gas required by the two customers of MFSC served by these delivery points. The maximum daily design capacities and actual average daily deliveries applicable to service provided at these delivery points are stated to be as follows:

Allied Delivery Point

(Mcf per day)

Maximum daily design capacity: 42,970
1985 Average daily flow rate: 8,956
1985 Maximum daily flow rate: 11,852

Little America Delivery Point

(Mcf per day)

Maximum daily design capacity: 264
1985 Average daily flow rate: 86.9
1985 Maximum daily flow rate: 431

It is stated that gas supplies delivered to Allied by MFSC are used by Allied to generate process heat in a calcine roaster to dry soda ash. While such gas supplies are primarily used in Allied's calciner, they are also consumed as fuel for several small heaters and used as back-up fuel in Allied's four coal-fired boilers, it is explained. MFR further states that gas delivered by MFSC to Little America, a motel/gas station complex, is utilized by Little America as fuel for heating and cooking.

MFR states that the construction and operation of the new metering facilities at the Allied and Little America delivery points would not change the existing delivery capacities at those points.

MFR submits that, pursuant to Opinion No. 221, it is authorized to provide (a) sale-for-resale service for MFSC under Rate Schedule CD-1 of MFR's FERC Gas Tariff, First Revised Volume No. 1, and (b) firm transportation service for MFSC under Rate Schedule X-33 of MFR's FERC Gas Tariff, Original Volume No. 3. In accordance with Opinion No. 221, MFR is committed to delivering to MFSC at the Allied and Little America CD-1/X-33 delivery points an appropriate mix of gas purchased by MFR for resale to MFSC and gas owned by MFSC and transported for MFSC by MFR, it is explained.

MFSC would continue to sell gas to Allied and Little America, it is stated, in accordance with firm and interruptible service rate schedules included as part of MFSC's Tariff No. 8 for Gas Service in the State of Wyoming.

MFR indicates that the proposed installations would have no adverse impact on peak day and annual deliveries to Docket No. MFSC, and that deliveries made to MFSC at the Little America and Allied CD-1/X-33 delivery points would continue to be within the maximum daily quantities applicable to the service provided to MFSC under MFR's FERC Rate Schedules CD-1 (Wyoming/Colorado Zone) (32,000 Mcf/d) and X-33 (160,000 Mcf/d).

Comment date: June 23, 1986, in accordance with Standard Paragraph G at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP86-429-000]

Take notice that on April 10, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86-429-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the long-term, firm transportation of up to 30 billion Btu of natural gas per day for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), from and within High Island Block A-270, offshore Texas, all as more fully set in the application which is on file with the Commission and open for public inspection.

Natural states that pursuant to an agreement between Natural and Tennessee, dated August 23, 1983, Tennessee would deliver, or cause to be delivered, to Natural for firm

transportation up to 30 billion Btu of natural gas per day, the demand quantity, at Natural's measurement facilities located on the High Island Block A-270 Production Platform B, offshore Texas (receipt point). Natural proposes to transport and redeliver thermally equivalent volumes of natural gas, less five-tenths of one percent for gas lost and unaccounted for, for Tennessee's account at an existing point of interconnection between the facilities of Natural and High Island Offshore System located in High Island Block A-270, offshore Texas.

In addition to the demand quantity, it is said that Natural would accept during the term of the agreement, on a fully interruptible basis, daily quantities of overrun gas which Tennessee delivers or causes to be delivered at the receipt point.

The proposed service, it is said, would continue for a term of 13 years from the date of first delivery of gas under the long-term authorization requested and year to year thereafter unless cancelled by either party upon 12 months advance written notice, or the initial 13-year term may be extended by mutual agreement of the parties for another period of 5 years. Natural states that it commenced this service pursuant to Part 284 of the Commission's Regulations and the blanket authorization issued to Natural in Docket CP80-125 and as reported in Docket No. ST83-727.

Natural proposes to charge Tennessee monthly for this service a demand charge equal to \$1.52 times the demand quantity. It is stated that if Natural accepts overrun gas, Tennessee would pay Natural 5.0 cents per billion Btu of overrun gas received by Natural at the receipt point.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP86-437-000]

Take notice that on April 14, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86-437-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 4 billion Btu of natural gas per day on an interruptible basis for Olin Corporation (Olin) and the addition and deletion of related unspecified transportation receipt points, all as more fully set forth in the application which is on file with

the Commission and open to public inspection.

It is explained that Natural and Olin have entered into a two-year gas transportation agreement dated March 27, 1986. Under such agreement Natural proposes to transport, on an interruptible basis, up to 4 billion Btu of natural gas per day on behalf of Olin, a high priority industrial end-user. Gas so transported would be used in the production of phosphate products in Olin's chemical plant in Joliet, Illinois, it is said.

It is further explained that Natural proposes to receive natural gas for Olin's account at the following existing interconnections between Natural's facilities and (1) Producer's Gas Company in Grady and Dewey Counties, Oklahoma; (2) Diamond Shamrock Exploration Company at the McKee plant in Moore County, Texas; (3) TransAmerican Transmission Corporation at Agua Dulce in Nueces County, Texas; (4) Kaiser Francis Oil Company in Woodward County, Oklahoma, and (5) MV Pipeline Company in Caddo County, Oklahoma.

Natural proposes to transport the volumes so received on an interruptible basis and redeliver them, less fuel and unaccounted for gas, to Northern Illinois Gas Company (NIGAS) for Olin's account at an existing point of interconnection in Livingston County, Illinois, for ultimate redelivery by NIGAS to Olin at its chemical plant in Joliet, Illinois.

Natural states that no new facilities would be required for the proposed interruptible transportation service, but requests authorization to add and delete future unspecified receipt points related to such service. Natural further states that it would file appropriate tariff revisions reflecting the addition and deletion of such receipt points by March 31 of each year.

For the proposed interruptible transportation service Natural would charge Olin the following rates:

Point of receipt	Point of delivery	Transportation rate (cents/million Btu)
Grady County, OK	Livingston County, IL	30.32
Woodward County, OK	do	28.30
Caddo County, OK	do	30.32
Dewey County, OK	do	29.06
Moore County, TX	do	30.32
Nueces County, TX	do	30.32

In addition to the above rates, which Natural states are consistent with its existing Rate Schedule No. T-1, Natural proposes to charge Olin the currently effective GRI surcharge as set forth on

Sheet No. 5A of its FERC Gas Tariff, Volume No. 1.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Northwest Central Pipeline Corporation

[Docket No. CP80-499-008]

Take notice that on April 14, 1986, Northwest Central Pipeline Corporation (Petitioner), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP80-499-008 a petition to amend further the Commission's order issued December 22, 1980, in Docket No. CP80-499-000, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize a two-year extension of its limited-term sale of gas to El Paso Natural Gas Company (El Paso), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that the sale to El Paso would continue to be made from its system supplies at a rate equal to its Rate Schedule I-2 rate. Petitioner further states that this rate is fully compensatory and non-discriminatory. Petitioner also states that it would continue to deliver the gas volumes to Natural Gas Pipeline Company of America at their interconnections in Ford and Barton Counties, Kansas, for transportation and redelivery to El Paso in Lea County, New Mexico.

Other than its proposed two-year extension of the sale, Petitioner states that it seeks no other changes of its prior arrangement.

Petitioner states that the proposed sales volumes are surplus to the requirements of its present and future customers. Petitioner further states that without the sale it could incur take-or-pay deficiencies of up to \$22.1 million in 1986.

Comment date: May 28, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Standard Gas Marketing Company

[Docket No. CP86-449-000]

Take notice that on April 16, 1986, Standard Gas Marketing Company (SGM), 5151 San Felipe, Houston, Texas 77056, filed in Docket No. CP86-449-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations (18 CFR 284.221) for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas for others, all as more fully set forth in the application which is on file with

the Commission and open to public inspection.

SGM states that it does not have any present operations but would upon the Commission's issuance of an optional expedited certificate of public convenience and necessity requested by it in Docket No. CP86-448-000 be a natural gas company engaged in the business of transporting natural gas in interstate commerce and would be subject to the Commission's jurisdiction under the Natural Gas Act.

SGM states that it accepts and would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations which paragraph refers to Subpart A of Part 284 of the Commission's Regulations.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

Tennessee Gas Pipeline Company, A Division of Tenneco Inc.

[Docket No. CP86-436-000]

Take notice that on April 11, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-436-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee to provide a natural gas transportation service for General Motors Corporation (General Motors), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Tennessee requests authorization to render a transportation service for General Motors for an initial term of five years, pursuant to the provisions of a gas transportation agreement (agreement), dated April 7, 1986.

Tennessee states that it agrees to accept and receive daily, up to 10.9 billion Btu of natural gas per day for the account of General Motors, on an interruptible basis, as determined in Tennessee's sole opinion. It is indicated that Tennessee would receive this gas at a point of interconnection between the facilities of Tennessee and Columbia Gas Transmission Corporation at Mayville, New York. Tennessee proposes to transport and deliver, less volumes for Tennessee's system fuel and uses and gas lost and unaccounted for, a thermally equivalent quantity of gas to a point of interconnection between the facilities of Tennessee and New York State Electric and Gas Company in West Lockport, New York.

It is said that Tennessee would charge General Motors a quantity charge equal

to the product of 6.02 cents multiplied by the total quantity in million Btu of gas delivered by Tennessee for the account of General Motors during the month.

In addition, General Motors would provide to Tennessee, at no cost to Tennessee, a daily volume of gas for Tennessee's system fuel and uses and gas lost and unaccounted for equal to .74 percent of the quantity received from General Motors on any day. Tennessee may elect to provide such quantities to General Motors at Tennessee's weighted average cost of gas, it is stated.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

10. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-464-000]

Take notice that on April 21, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-464-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee to transport natural gas for Tenneco Oil Company (TOC), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authority to transport, on an interruptible basis, up to 2 billion Btu of natural gas per day for a term of 5 years and year to year thereafter. It is stated that TOC would use the gas for gas lift and compressor operations on TOC's platform in Main Pass area South Addition Block 297, offshore Louisiana (Main Pass 297).

It is asserted that Tennessee would transport gas for TOC through two separated segments of its pipeline. Tennessee states that it would receive gas from TOC at the Main Pass 311 A platform and/or the Main Pass 311 B platform for delivery to Southern Natural Gas Company (Southern) at an existing subsea interconnection in Main Pass 311. Southern then proposes to transport this gas from such point in Main Pass 311 to an existing interconnection with Tennessee at Southern's platform in Main Pass 298.¹ It is explained that after Southern delivers gas to Tennessee in Main Pass 298, Tennessee would complete the transaction by making delivery to TOC in Main Pass 297.

¹ It is indicated that Southern has filed an application for its segment of the transportation service in Docket No. CP86-147-000.

Tennessee requests authority for both the transportation in Main Pass Block 311 and the service from Main Pass Block 298 to 297. Tennessee proposes to charge TOC 3.68 cents per million Btu of gas delivered.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

11. Texas Eastern Transmission Corp. and Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP75-127-009]

Take notice that on April 21, 1986, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001 (Petitioners), filed in Docket No. CP75-127-009 a petition to amend the order issued July 18, 1975, in Docket No. CP75-127, as amended by orders issued September 22, 1977, April 9, 1980, and December 2, 1980, pursuant to section 7(c) of the Natural Gas Act so as to authorize the addition of exchange delivery points pursuant to amendments to an existing transportation and exchange agreement, as amended, on file with the Commission as Texas Eastern's FERC Rate Schedule X-73 and Tennessee's FERC Rate Schedule X-47, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that they are parties to a currently effective transportation and exchange agreement dated October 17, 1974, as amended June 27, 1977, September 5, 1979, and September 9, 1980, which provides for the transportation and exchange of natural gas volumes at various points offshore Louisiana.

It is stated that the deliveries of the new sources of gas at the additional exchange delivery points would not increase the certificated exchange volumes of 230,000 Mcf per day, previously authorized in Docket No. CP75-127. It is further stated that the proposed deliveries of new gas and the subsequent exchange represent the most efficient reasonable and least costly method by which Petitioners can receive these gas supplies into their respective systems.

Comment date: May 28, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

12. The Union Light, Heat and Power Company

[Docket No. CP86-447-000]

Take notice that on April 15, 1986, The Union Light, Heat and Power Company (Union), 107 Brent Space Square, Covington, Kentucky 41011, filed in Docket No. CP86-447-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Union to acquire certain pipeline facilities to be abandoned by Columbia Gas Transmission Corporation (Columbia) and to operate those facilities with Union's existing transmission and distribution system and for permission and approval to abandon or amend certain services related to Columbia's ownership of such facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Union proposes to acquire from Columbia approximately 10.7 miles of 24-inch pipeline and 0.8 mile of 20-inch pipeline and appurtenant facilities. Union requests authority to operate these facilities in an integrated manner with its existing transmission and distribution system. In connection with the proposed acquisition of such facilities, Union also proposes to abandon an operating agreement with Columbia covering such facilities, designated as Union's Rate Schedule X-1, and proposes to modify an agreement under which it performs transportation for Columbia, designated as Union's Rate Schedule X-4.

It is stated that the proposed abandonments would not result in any change in the service provided by Union to its existing customers. As a result of the proposals, Union states that it would be able to avoid the construction of duplicative facilities and would achieve a substantially greater degree of flexibility and integration in its system operations.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

13. Washtenaw Pipeline Company

[Docket No. CP86-444-000]

Take notice that on April 15, 1986, Washtenaw Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86-444-000 an application

pursuant to section 7(c) of the Natural Gas Act and Subpart E of Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction and operation of a natural gas pipeline and related facilities and transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is a partnership between American Natural Service Company, a wholly-owned subsidiary of American Natural Resources Company, and Conar Corporation, a wholly-owned subsidiary of Consumers Power Company (Consumers), and requests authorization to construct and operate 13.5 miles of 20-inch pipeline and related facilities through which it would be able to transport up to 125,000 dt equivalent of natural gas per day on a firm basis on behalf of Consumers, from a proposed point of interconnection with ANR Pipeline Company in Washtenaw County, Michigan, to a proposed point of interconnection with Consumers in Wayne County, Michigan.

It is stated that the cost of the proposed facilities would be approximately \$4,343,250. It is indicated that the cost would be financed in part by equity contributions from the partners, with long-term funding of the balance. Applicant proposes to assess Consumers a two-part rate for the proposed firm service, consisting of a reservation charge of \$0.69 per dt equivalent per month of maximum daily quantity of gas and a commodity rate of 0.17 cents per dt equivalent of gas transported.

Applicant proposes to render firm transportation service for Consumers and, to the extent of available capacity, interruptible service on a first come, first served basis. It is stated that the rate for the service would be pursuant to Applicant's new proposed Rate Schedules F and I, respectively, in Original Volume No. 1 of its F.E.R.C. Gas Tariff.

Applicant states that it has concurrently filed in Docket No. CP86-445-000 for a blanket certificate pursuant to § 284.221 of the Commission's Regulations.

Comment date: May 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North

Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10752 Filed 5-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-690-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Borden Chemical et al.

Comment date: June 12, 1986, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Borden Chemical

[Docket No. QF86-690-000]

May 7, 1986.

On April 21, 1986, Borden Chemical (Applicant), of P.O. Box 427, Geismar, Louisiana 70734, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Applicant's Geismar Plant in Geismar, Louisiana. The facility will consist of a gas combustion turbine generator, a waste heat recovery boiler, and condensing steam turbine generators. The primary energy source will be natural gas. The electric power production capacity of the facility will be 35.3 MW. The useful thermal output will be used in Applicant's distillation reboilers and process heaters. Construction of the facility was scheduled to commence in April, 1986.

2. Mobil Joliet Refining Corporation

[Docket No. QF86-683-000]

May 7, 1986.

On April 18, 1986, Mobil Joliet Refining Corporation (Applicant), of P.O. Box 874, Joliet, Illinois 60434, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 27.6 MW small power production facility will be located at the Joliet Refinery, Route 55 and Arsenal Road, Joliet, Illinois. The facility will consist of a gas combustion turbine generator, a waste heat steam generator, and a steam turbine generator. The primary energy source will be refinery off gas.

3. Martin Marietta Aluminum Properties, Inc.

[Docket No. QF86-686-000]

May 2, 1986.

On April 22, 1986, Martin Marietta Aluminum Properties, Inc. (Applicant),

of 6801 Rockledge Drive, Bethesda, Maryland 20817, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the alumina manufacturing facility of the Applicant in St. Croix, Virgin Islands. The facility will consist of three oil-fired boilers, one coal-fired boiler, four extraction steam turbine-generators, and auxiliary equipment. The extracted steam will be used for desalination of seawater and for process application in ethanol processing facility. The net electric power production capacity of the facility will be 35,000 kW. The primary energy source will be coal. Part of the facility was installed in 1965 and part in 1984-85.

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 should 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. 86-10750 Filed 5-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6872-002 35 al.]

Hydroelectric Applications (City of Ithaca et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

- 1a. Type of Application: Exemption (5MW or less).
- b. Project No: 6872-002.
- c. Date Filed: September 11, 1985.
- d. Applicants: City of Ithaca.
- e. Name of Project: Sixty Foot Dam.

f. Location: Six Mile Creek in Tompkins County, NY.

g. Filed Pursuant to: Energy Security Act of 1980 section 408 (16 U.S.C. 2705 and 2708).

h. Contact Person: Mr. John C. Gutenberger, Mayor, City of Ithaca, City Hall, 108 East Green Street, Ithaca, NY 14850, (608) 272-1713.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 70-foot-high, 200-foot-long concrete dam owned by the City of Ithaca with a crest elevation of 705 feet msl; (2) an existing reservoir with a surface area of 47 acres and a storage capacity of 800 acre-feet; (3) a new 14-foot-high, 13-foot-wide, 6-foot-long intake structure; (4) an existing 6-foot-diameter, 47-foot-long outlet pipe; (5) a new 4-foot-diameter, 142-foot-long penstock; (6) a new powerhouse containing a generating unit with a rated capacity of 400-kW; (7) a new 1,160-foot-long transmission line tying into the existing New York State Electric & Gas Company System; and (8) appurtenant facilities. The Applicants estimates a 1,400,000 kWh average annual energy production.

k. Purpose of Project: Power generated would be sold to New York State Electric and Gas Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

2a. Type of Application: Preliminary Permit.

b. Project No: 9894-000.

c. Date Filed: February 3, 1986.

d. Applicants: Hydro Inc.

e. Name of Project: Saugerties.

f. Location: Esopus Creek in Ulster County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert E. Wagner, Hydro, Inc., 4050 Barclay Lane, Saugerties, NY 12477, (914) 246-8957.

i. Comment Date: June 11, 1986.

j. Competing Application: Project No. 9901-000. Date Filed: February 3, 1986.

k. Description of Project: The proposed project would consist of: (1) An existing 32-foot-high, 346-foot-long concrete gravity dam; (2) a reservoir with a surface area of 140 acres, a storage capacity of 826 acre-feet, and a normal water surface elevation of 46.5 feet m.s.l.; (3) an intake structure; (4) a new 12-foot-diameter, 80-foot-long steel

penstock; (5) a new concrete powerhouse containing one generating unit with a capacity of 2,000 kW; (6) two 10-foot-diameter, 12-foot-long steel outlet pipes; (7) a new transmission line 1,500 feet long; and (8) appurtenant facilities. The applicant estimates the average annual generation would be 17,472,000 kWh. The existing dam is owned by Hydro, Inc., Saugerties, New York and Houseboat Realty, Bearsville, New York.

l. Purpose of Project: Project power would be sold to the Central Hudson Gas and Electric Corporation.

m. This notice also consists of the following standard paragraphs: A8, B, C, & D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The applicant seeks issuance of a preliminary permit for a period of 18 months during which time the applicant would investigate project design alternatives, financial feasibility, environmental potential. Depending upon the outcome of the studies, the applicant would decide whether to proceed with an application for FERC license. The applicant estimates that the cost of the studies under permit would be \$55,000.

3a. Type of Application: Preliminary Permit.

b. Project No: 9809-000.

c. Date Filed: December 30, 1985.

d. Applicant: Rockfish Corporation, Inc.

e. Name of Project: Lawhorne Mill Dam Power Project.

f. Location: On the Rockfish River in Nelson County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John K. Pollock, Rockfish Corporation, Inc., Rt. 1 Box 413, Afton, VA 22920, (703) 456-6519.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Lawhorne Mill Dam approximately 100 feet long and 6 feet high; (2) an existing reservoir with an area less than one-acre having a storage capacity of 5 acre-feet at an elevation of 480 feet msl; (3) an existing mill race approximately 10 feet long and 5 feet wide; (4) a new wooden shed containing a single turbine/generator unit having an installed capacity of 75 kW operating at 6 feet of hydraulic head; and (5) appurtenant facilities. An existing 12.5-Kv transmission line is available adjacent to the site. The Applicant estimates that the average annual generation would be 500,000 kWh. The project dam is owned by Lawhorne Mill.

k. Purpose of Project: The Applicant intends to sell the power generated from the proposed facility to the Virginia Electric & Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposes Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be \$5,000.

3a. Type of Application: Preliminary Permit.

b. Project No: 9845-000.

c. Date Filed: December 31, 1985.

d. Applicant: Humia Hydro Corporation.

e. Name of Project: Humboldt Mill Dam.

f. Location: On the Des Moines River near Humboldt, Humboldt County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Thomas J. Wilkinson, Jr., Humia Hydro Corporation, 630 Higley Building, Cedar Rapids, IA 51401, (319) 366-4990.

i. Comment Date: June 6, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam 12 feet high and 557 feet long; (2) an existing 80-acre reservoir with a storage capacity of 400 acre-feet at a surface elevation of 1,070 msl; (3) a proposed concrete block powerhouse 25 feet square housing a 634-kW generator; (4) a proposed 12.47 kV transmission line 50 feet long; and (5) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 3.0 GWh. The project energy would be sold to the local utility. The dam is owned by the Humboldt County Conservation Board, Dakota City, Iowa.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with

more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$12,000.

5a. Type of Application: Preliminary Permit.

b. Project No.: 9914-000.

c. Date Filed: February 18, 1986.

d. Applicant: Robert W. Shaw.

e. Name of Project: Indian Stream.

f. Location: Indian Stream, Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert W. Shaw, 4 Pleasant Street, P.O. Box 17, Colebrook, NH 03576, (603) 237-4358.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed project would consist of: (1) A new concrete gravity dam, 881 feet long, 108 feet high, and incorporating an integral powerhouse; (2) a new earthen dike, 900 feet long and 60 feet high; (3) a new impoundment of 1,220 acres surface area with a storage capacity of 58,300 acre-feet at a normal maximum surface elevation of 1,380 feet mean sea level; (4) a new turbine/generator with a capacity of 5.5 MW; (5) a new 34.5-kV transmission line, 5.8 miles long; and (6) appurtenant facilities.

The estimated annual energy production is 21,500,000 kWh. The hydraulic head would be 100 feet. Project power would be sold to Public Service Company of New Hampshire.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$166,000.

6a. Type of Application: Preliminary Permit.

b. Project No.: 9930-000.

c. Date Filed: March 3, 1986.

d. Applicants: Northern Hydro Consultants, Inc.

e. Name of Project: Fort Covington.

f. Location: On the Salmon River, Franklin County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. James W. Dowd, Box 319, Chateaugay, NY 12920, (518) 497-3146.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete gravity dam 257 feet long, 21 feet high; (2) an existing impoundment 14.3 acres in surface area with a storage capacity of 45 acre-feet at a normal maximum surface elevation of 156 feet mean sea level; (3) an existing concrete water box 34 feet long and 18 feet wide, to house a new submersible turbine/generator of 425kW capacity; (4) a new equipment building less than 300 square feet in area; (5) a new 13.2 kV transmission line 100 feet long; and (6) appurtenant facilities.

The estimated annual energy production is 2,200,000 kWh. The hydraulic head is 11 feet. Project power would be sold to Niagara Mohawk Power Corporation. The owner of the dam is Northern Hydro Consultants, Inc.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$35,000.

7a. Type of Application: Preliminary Permit.

b. Project No.: 9828-000.

c. Date filed: December 31, 1985.

d. Applicant: Thomas J. Collins.

e. Name of Project: Wilmington Hydropower Project.

f. Location: On the Kankakee River, near Wilmington, Will County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Thomas J. Collins, Suite 401, 600 West Jackson Boulevard, Chicago, IL 60606, (312) 454-1060.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam 635 feet long located in the main channel; (2) an existing 50 acre reservoir with a storage capacity of 350

acre-feet at a surface elevation of 538 msl; (3) an existing canal; (4) an existing diversion dam 160 feet long and 9 feet high across the canal; (5) a proposed powerhouse at the left dam abutment housing two 300-kW generator for a total capacity of 600 kW; (6) a proposed tailrace; (7) a proposed 12-kV transmission line 300 feet long; and (8) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 3.8 GWh. The project energy would be sold to a utility or industry.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$95,000.

8a. Type of Application: Preliminary Permit.

b. Project No: 9808-000.

c. Date Filed: December 30, 1985.

d. Applicant: Rockfish Corporation, Inc.

e. Name of Project: Ca Ira Dam Power Project.

f. Location: On the Willis River near the town of Cumberland, Cumberland County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John K. Pollock, Rockfish Corporation, Inc., Rt. 1 Box 413, Afton, Va 22920, (703) 456-6519.

i. Comment Date: June 11, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Ca Ira Dam approximately 250 feet long and 10 feet high; (2) an existing 8-acre reservoir having a storage capacity of 40 acre-feet at an elevation of 240 feet msl; (3) a new wooden shed approximately 10 feet by 15 feet containing a single turbine/generator unit having an installed capacity of 100 kW operating at 10 feet of hydraulic head; and (4) appurtenant facilities. An existing 12.5-kV transmission line is available adjacent to the site. The Applicant estimates that the average annual generation would be 700,000 kWh. The project dam is owned by the Ca Ira Fishing Club.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Virginia Electric & Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be \$10,000.

9a. Type of Application: Preliminary Permit.

b. Project No: 9806-000.

c. Date Filed: December 30, 1985.

d. Applicant: Rockfish Corporation, Inc.

e. Name of Project: Reids Dam Power Project.

f. Location: On the Maury River near the City of Lexington, Rockbridge County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John K. Pollock, Rockfish Corporation, Inc., Rt. 1 Box 413, Afton, VA 22920, (703) 456-6519.

i. Comment Date: June 13, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Reids Dam approximately 430 feet long and 16 feet high and an adjacent navigational lock 15 feet wide and 75 feet long; (2) an existing 36-acre reservoir having a storage capacity of 220 acre-feet at an elevation of 890 feet msl; (3) a new wooden shed approximately 15 feet by 20 feet containing a single turbine/generator unit having an installed capacity of 250 kW operating at 16 feet of hydraulic head; (4) a new 500-foot-long 600 volt transmission line; and (5) appurtenant facilities. The Applicant estimates the average annual energy production to be 2,000,000 kWh. The project dam is owned by the City of Lexington.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Virginia Electric & Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a

preliminary permit for a period of 36 months during which time it would prepare studies

of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be \$20,000.

10a. Type of Application: Preliminary Permit.

b. Project No: 9801-000.

c. Date Filed: December 30, 1985.

d. Applicant: Twin Lakes Associates, Inc.

e. Name of Project: Little Willis Gulch.

f. Location: On Little Willis Gulch, near Leadville, partially within San Isabel National Forest, in Chaffee and Lake Counties, Colorado. (In Sections 25, 26, 27, 28, 29, 30, and 31 of T11s, R80W, Section 36 of T11S, R81W, and Section 1 of T12S, R81W, 6th P.M.&B.)

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Dennis O'Neill, President, Twin Lakes Associates, Inc., P.O. Box 961, Leadville, CO 80461, (303) 486-3397.

i. Comment Date: June 11, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 10-foot-high, 25-foot-long earth fill diversion structure at elevation 11,220 feet msl; (2) a 24-inch-diameter, 5,000-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 775 kW operating under a head of 570 feet; and (4) a 13.8-kV, 60,000-foot-long transmission line interconnecting the project to an existing Sangre de Cristo Rural Electric Association line. The project's estimated average annual generation of 5.843 GWh would be sold to a utility yet to be determined.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environment effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be \$35,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

11a. Type of Application: Preliminary Permit.

b. Project No. 9799-000.

c. Date Filed: December 30, 1985.

d. Applicant: Twin Lakes Associates, Inc.

e. Name of Project: Cache Creek No. 2.
f. Location: On Clear Creek Ditch, near Leadville in Chaffee County, Colorado. (In Sections 1 and 2 of T 125, R80W, Section 36 of T11S, R80W and Section 31 of T11S, R79W, 6th P.M. & B.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Dr. Dennis O'Neill, President, Twin Lakes Associates, Inc., P.O. Box 961, Leadville, CO 80461, (303) 486-3397.

i. Comment Date: June 11, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 10-foot-high, 20-foot-long earth fill diversion structure at elevation 9,480 feet msl; (2) a 30-inch-diameter, 4,000-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 410 kW operating under a head of 240 feet; and (4) a 13.8-kV 7,400-foot-long transmission line interconnecting the project to an existing Sanque de Cristo Rural Electric Association line. The project's estimated average annual generation of 3.515 GWh would be sold to a utility yet to be determined.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be \$35,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

12a. Type of Application: Preliminary Permit.

b. Project No. 9798-000.

c. Date Filed: December 30, 1985.

d. Applicant: Twin Lakes Associates, Inc.

e. Name of Project: Boswell Gulch.

f. Location: On Boswell Gulch, near Leadville, partially within San Isabel National Forest, in Chaffee and Lake Counties, Colorado. (In Sections 25, 26, 27, 28, 29, 30 and 31 of T11S, R80W, 6th P.M. & B.)

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Dr. Dennis O'Neill, President, Twin Lakes Associates, Inc., P.O. Box 961, Leadville, CO 80461, (303) 486-3397.

i. Comment Date: June 11, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of:

(1) A 7-foot-high, 12-foot-long earth fill diversion structure at elevation 11,120 feet msl; (2) a 24-inch-diameter, 2,500-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 500 kW operating under a head of 720 feet; and (4) a 13.8-kV 50,000-foot-long transmission line interconnecting the project to an existing Sanque de Cristo Rural Electric Association line. The project's estimated average annual generation of 3.690 GWh would be sold to a utility yet to be determined.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be \$35,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

13a. Type of Application: Preliminary Permit.

b. Project No.: 9918-000.

c. Date Filed: February 18, 1986.

d. Applicant: Dam Thirteen Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 13.

f. Location: On the Kentucky River in Lee County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ingolf Hermann, 380 Ridgehill Professional Bldg., Minnetonka, MN 55343, (612) 546-5510.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 13, having a water surface elevation of 620.5 feet msl and would consist of: (1) A new reinforced concrete powerhouse approximately 80 feet by 90 feet located on the right abutment containing two turbine/generator units having a total installed capacity of 5,200 kW operating at 17 feet of hydraulic head; (2) a new 800-foot-long 15-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 21.0 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company or East Kentucky Power Cooperative.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$100,000.

14a. Type of Application: Preliminary Permit.

b. Project No.: 9917-000.

c. Date Filed: February 18, 1986.

d. Applicant: Dam Five Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 5.

f. Location: On the Kentucky River in Anderson and Woodford Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ingolf Hermann, 380 Ridgehill Professional Bldg., Minnetonka, MN 55343, (612) 546-5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 5, having a water surface elevation of 485.35 feet msl and would consist of: (1) A new reinforced concrete powerhouse approximately 80 feet by 90 feet located on the right abutment containing two turbine/generator units having a total installed capacity of 6,000 kW operating at 13 feet of hydraulic head; (2) a new one-mile-long 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 28.4 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company or East Kentucky Power Cooperative.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design

alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license.

Applicant estimates that the cost of the studies under permit would be \$100,000.

15a. Type of Application: Preliminary Permit.

b. Project No: 9913-000.

c. Date Filed: February 12, 1986.

d. Applicant: Dam Twelve Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 12.

f. Location: On the Kentucky River in Estill County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contract Person: Mr. Ingolf Mermann, 380 Ridgehill Professional Bldg., Minnetonka, MN 55343. (612) 546-5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 12, having a water surface elevation of 602.6 feet msl and would consist of: (1) A new reinforced concrete powerhouse approximately 80 feet by 90 feet located in the left abutment containing two turbine/generator units having a total installed capacity of 5,500 kW operating at 17 feet of hydraulic head; (2) a new 1,400-foot-long 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 16.1 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company or East Kentucky Power Cooperative.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license.

Applicant estimates that the cost of the studies under permit would be \$100,000.

16a. Type of Application: Preliminary Permit.

b. Project No: 9911-000

c. Date filed: February 12, 1986.

d. Applicant: Dam Ten Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 10.

f. Location: On the Kentucky River in Madison and Clark Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ingolf Hermann, Ridgehill Professional Bldg., Suite 380, 2000 Plymouth Road, Minnetonka, MN 55343. (612) 546-5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 10, having a water surface elevation of 567.6 feet msl and would consist of: (1) a new reinforced concrete powerhouse approximately 80 feet by 90 feet located on the left abutment containing two turbine/generator units having a total installed capacity of 5,100 kW operating at 17 feet of hydraulic head; (2) a new one-mile-long 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 20.9 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$200,000.

17a. Type of Application: Preliminary Permit.

b. Project No.: 9794-000.

c. Date Filed: December 30, 1985.

d. Applicant: City of Kings Mountain.

e. Name of Project: John Henry Moss Hydropower Project.

f. Location: On Buffalo Creek near the City of Kings Mountain, Cleveland County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: John Henry Moss, Mayor, City of Kings Mountain, P.O. Box 429, Kings Mountain, NC 28086, (704) 739-2563.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing earth filled dam approximately 840 feet long and 99 feet high; (2) an existing 1,350-acre reservoir having a storage capacity of 38,000 acre-feet at an elevation of 736 feet msl; (3) an existing penstock approximately 220 feet long and 54 inches in diameter; (4) a new concrete powerhouse 20 feet by 40 feet containing two turbine/generator units having a total installed capacity of 1,100 kW operating at 81 feet of hydraulic head; (5) a new 2.3-kV transmission line approximately 900 feet long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 3.7 MWh. The project dam is owned by the Applicant.

k. Purpose of Project: All project energy would be used by the City of Kings Mountain or sold to Duke Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$25,000.

18a. Type of Application: Preliminary Permit.

b. Project No.: 9916-000.

c. Date Filed: February 18, 1986.

d. Applicant: Dam Four Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 4.

f. Location: On the Kentucky River in the City of Frankfort, Franklin County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ingolf Hermann, 380 Ridgehill Professional Bldg., Minnetonka, MN 55343, (612) 546-5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 4, having a water surface elevation of 470.35 feet msl and would consist of: (1) A new reinforced concrete

powerhouse approximately 80 feet by 90 feet located on the east abutment containing two turbine/generator units having a total installed capacity of 5,000 kW operating at 11 feet of hydraulic head; (2) a new 15,000-foot-long 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 26.4 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company or East Kentucky Power Cooperative.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$100,000.

20a. Type of Application: Preliminary Permit.

b. Project No.: 9915-000.

c. Date Filed: February 18, 1986.

d. Applicant: Dam Fourteen Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 14.

f. Location: On the Kentucky River in Lee County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ingolf Hermann, 380 Ridgehill Professional Bldg., Minnetonka, MN 55343, (612) 546-5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 14, having a water surface elevation of 637.6 feet MSL and would consist of: (1) A new reinforced concrete powerhouse approximately 80 feet by 90 feet located in the left abutment containing two turbine/generator units having a total installed capacity of 5,100 kW operating at 17 feet of hydraulic head; (2) a new 500-foot-long 15-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 16 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at

the facility to the Kentucky Utility Company or East Kentucky Power Cooperative.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$100,000.

20a. Type of Application: Preliminary Permit.

b. Project No.: 9912-000.

c. Date Filed: February 12, 1986.

d. Applicant: Dam Eleven Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 11.

f. Location: On the Kentucky River in Madison and Estill Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ingolf Hermann, 380 Ridgehill Professional Bldg., Minnetonka, MN 55343, (612) 546-5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 11, having a water surface elevation of 585.6 feet MSL and would consist of: (1) A new reinforced concrete powerhouse approximately 66 feet by 57 feet containing two turbine/generator units having a total installed capacity of 8 MW operating at 18.0 feet of hydraulic head; (2) a new 7.5-mile-long 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy generation to be 30 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the facility to the Kentucky Utility Company or East Kentucky Power Cooperative.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design

alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license.

Applicant estimates that the cost of the studies under permit would be \$100,000.

21a. Type of Application: Preliminary Permit.

b. Project No: 9909-000.

c. Date Filed: February 12, 1986.

d. Applicant: Dam Eight Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 8.

f. Location: On the Kentucky River in Jessamine and Garrard Counties, Kentucky.

9. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ingolf Hermann, Ridgehill Professional Bldg., Suite 380, 2000 Plymouth Road, Minnetonka, MN 55343, (612) 546-5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 8, having a water surface elevation of 533.26 msl and would consist of: (1) A new powerhouse approximately 57 feet by 66 feet located at the right abutment containing two turbine/generator units having a total installed capacity of 7,000 kW operating at 18.6 feet of hydraulic head; (2) a new 1.5-mile-long 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 29.8 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$200,000.

22a. Type of Application: Preliminary Permit.

b. Project No: 9908-000.

c. Date Filed: February 12, 1986.

d. Applicant: Dam Three Hydro Partners.

e. Name of Project: Kentucky River Lock and Dam No. 3.

f. Location: On the Kentucky River in Henry and Owen Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ingolf Hermann, 380 Ridgehill Professional Bldg., Minnetonka, MN 55343, (612) 546-5110.

i. Comment Date: June 9, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Kentucky River Lock and Dam No. 3, having a water surface elevation of 456 msl and would consist of: (1) A new reinforced concrete powerhouse approximately 80 feet by 90 feet located on the right abutment containing two turbine/generator units having a total installed capacity of 6,000 kW operating at 13.2 feet of hydraulic head; (2) a new 2,000-foot-long 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 28.9 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Kentucky Utility Company.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$100,000.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary

permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed to respond to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining this appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and

Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms

and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 8, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10753 Filed 5-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial, Wellhead Decontrol, (United Gas Pipe Line Company); Order Granting Request For Waiver

[Issued: May 7, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naevé.

On February 25, 1986, United Gas Pipe Line Company (United) filed a request for waiver of the restrictions in the transitional provisions of § 284.105 of the regulations adopted in Order No. 436.¹ United seeks the waiver of permit the transportation of gas pursuant to section 311 of the Natural Gas Policy Act. We will grant United's request for waiver.

On November 27, 1984, Oxy Petroleum, Inc. (Oxy) and Tarpon Offshore Pipeline System, Inc. (Tarpon) entered into a gas purchase agreement whereby Oxy agreed to sell to Tarpon gas in and around Block 773-L of the Mustang Island area in offshore Texas. On March 27, 1985, Tarpon and Texas Industrial Energy Company (TIECO), a Hinshaw pipeline company, entered into a gas purchase agreement whereby

Tarpon agreed to sell the gas it purchased from Oxy to TIECO. On June 1, 1985, TIECO and United entered into a gas exchange transportation agreement whereby United agreed to receive the gas from TIECO and redeliver an equivalent volume of gas to TIECO's facilities.

As the producer of the gas, Oxy stated in an affidavit dated April 25, 1986, that June 1, 1985 but before October 9, 1985, it expended a total of \$420,000 on the construction and inspection of pipeline and gathering facilities, in reliance on the transportation agreement. Completion of the platform facilities around Block 773-L was delayed until November 18, 1985 due to engineering problems relating to the quality of the gas.²

In *CLARCO Gas Company, Inc.*,³ we clarified our policy concerning waivers of the restrictions in the transitional provisions of Order No. 436:

If gas hasn't flowed by October 9, 1985 the Commission will grant a waiver from the restrictions in the transitional provisions to the extent necessary to allow the transportation to commence if the parties executed a written gas transportation agreement prior to October 9, 1985, and expended significant funds or constructed significant facilities in reliance on that agreement, after the agreement was executed and prior to October 9, 1985.

We find that the facts and circumstances presented meet the *CLARCO* standard in that Oxy constructed significant facilities after the execution of a transportation agreement and prior to October 9, 1985, in reliance on a written transportation agreement which was executed prior to October 9, 1985. Accordingly, we grant United's request for waiver of the restrictions in § 284.105 to the extent necessary to permit United's transportation of gas for TIECO, as described above and in the transportation agreement, to commence.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10749 Filed 5-12-86; 8:45 am]

BILLING CODE 6717-01-M

² United States in its application, and Oxy confirms in its affidavit, that Oxy expended approximately \$3,000,000 on the Block 773-L facilities and that, absent a waiver, the facilities will be rendered useless.

³ 34 FERC ¶ 61,386 [March 28, 1986].

¹ 33 FERC ¶ 61,007, 50 FR 42408 (October 18, 1985).

[Project No. 7358-003]

Salt Lake County Water Conservancy District; Surrender of Conduit Exemption

May 7, 1986.

Take notice that Salt Lake County Water Conservancy District, Exemptee for the proposed 11400 South Project, has requested that its conduit exemption be terminated. The 11400 South Project is located at the 11400 South Pump Station on the Cross Valley Water Transmission Pipeline in the town of Draper, Salt Lake County, Utah. The conduit exemption was issued on September 29, 1983 and no construction had begun on the project to date.

The Exemptee filed the request on April 15, 1986, and the conduit exemption for Project No. 7358 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. 86-10747 Filed 5-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-11-000, et al.]

Electric Rate and Corporate Regulation Filing; Southern California Edison Co. et al.

May 7, 1986.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. EL85-11-000]

Take notice that on April 24, 1986 Southern California Edison Company (Edison) tendered for filing a report of refunds made to its resale customers pursuant to the Commission's order of September 17, 1985.

Comment date: May 19, 1986 in accordance with Standard Paragraph H at the end of this notice.

2. Alamito Shareholder v. Alamito Company

[Docket No. EL85-36-000]

Take notice that on April 25, 1986, Alamito Shareholder tendered for filing a complaint against Alamito Company pursuant to sections 204, and 306 and the Federal Power Act ("Act"), 16 U.S.C.

824c and 825e, and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206. Alamito Shareholder specifically requests the Commission to take immediate action to obtain a commitment from Alamito not consummate a proposed merger transaction until the Commission completes its review of the proposed merger. Should Alamito fail to provide the Commission with such a commitment, then Alamito Shareholder that the Commission seek injunctive relief against Alamito under 825(m) enjoining the merger pending the outcome of this proceeding, and that the Commission provides such other relief as may be appropriate.

Comment date: June 6, 1986 in accordance with Standard Paragraph E at the end of this notice.

3. Arizona Public Service Company

[Docket No. ER79-126-012]

Take notice that on April 25, 1986, Arizona Public Service Company tendered for filing six copies of the Supplemental refund of a late payment charge made to the Papago Utility Tribal Authority (PTUA) associated with the Commission's Order on Remand in Docket No. ER79-126-011. This Supplemental Refund is intended to cover a \$5,908.88 late payment charge (in accordance with contract provisions) that accompanied PTUA's backbilling payment made on July 26, 1983 pursuant to FERC Opinion No. 137, plus \$2,025.58 for interest through April 18, 1986.

Because of an administrative oversight, this amount was not included with the Commission's Order on Remand in Docket No. ER79-126-001. This filing is also intended to satisfy PTUA's Protest and Motion to Intervene Out-of-Time in Docket No. ER79-126-012.

Comment date: May 19, 1986, in accordance with Standard Paragraph H at the end of this notice.

4. David M. Barasch, Consumer Advocate of Pennsylvania, Complainant v. Allegheny Generating Company, Respondent

[Docket No. EL86-38-000]

Take notice that on April 29, 1986, David M. Barasch, the Consumer Advocate of Pennsylvania, tendered for filing a complaint against Allegheny Generating (AGC) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206.

The Office of the Consumer Advocate requests that the Commission:

- Consolidate any and all Complainants against AGC's current return on equity;
- Hold evidentiary hearings on the

factual and legal bases for AGC's current 14.6 percent return on equity;

- Reduce AGC's return on equity to not more than 12.0 percent; and
- Grant any other relief which the Commission finds necessary or proper.

Comment date: June 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Consumer Advocate Division of the West Virginia Public Service Commission, and Maryland People's Counsel, Complainants v. Allegheny Generating Corporation, Respondent

[Docket No. EL86-37-000]

Take notice that on April 28, 1986 the Consumer Advocate Division of the West Virginia Public Service Commission (CAD) and the Maryland People's Counsel (People's Counsel) tendered for filing a joint complaint against Allegheny Generating Corporation (AGC). CAD and the People's Counsel request that:

- FERC docket this joint complaint and set it for hearing as soon as practicable;
- This joint complaint be joined with any other complaints filed concerning AGC's return on equity;
- FERC adjust AGC's allowed rate of return on equity under the Settlement to a level one hundred (100) basis points below the FERC generic rate of return as periodically adjusted; and
- FERC grant joint complainants any other relief to which they may be entitled.

Comment date: June 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas Gas and Electric Company

[Docket Nos. ER85-461-005 and ER85-521-002]

Take notice that on April 28, 1986, Kansas Gas and Electric Company tendered for filing its refund report for Kansas Electric Power Cooperative in accordance with the letter order dated March 28, 1986.

Comment date: May 19, 1986, in accordance with Standard Paragraph H at the end of this notice.

7. Louisiana Power & Light Company

[Docket No. ER86-464-000]

Take notice that on May 2, 1986, the Louisiana Power & Light Company (LP&L) tendered for filing a Notice of Cancellation of an Agreement dated November 24, 1982 providing for the transmission of up to 10 mw of power and energy to the Municipal Energy

Agency of Mississippi (MEAM) from the City of Lafayette, Louisiana (City).

LP&L has requested waiver of the notice requirements of § 35.15 of the Commission's Regulations in order to permit termination of the Agreement on April 1, 1986, as requested by the City.

LP&L stated that a copy of this filing was mailed to the City of Lafayette, Louisiana.

Comment date: May 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of Indiana, Inc.

[Docket No. ER86-448-000]

Take notice that Public Service Company of Indiana, Inc. on May 2, 1986 tendered for filing pursuant to the Interconnection Agreement between Public Service Company of Indiana, Inc. (Service Company) and Cincinnati Gas & Electric Company (Cincinnati Company) a Tenth Supplemental Agreement to become effective January 1, 1986, pursuant to § 35.2 of the Commission's Regulations.

Said Supplemental Agreement provides for the following:

1. Modify Service Schedule A—Emergency Service incorporates a minimum emergency energy charge and changes Cincinnati Company's Order 84 language.

2. Modify Service Schedule B—Interchange Power to change Cincinnati Company's Order 84 language.

3. Inserts a new rate Schedule E—Short Term Power which deletes the existing Rate Schedule E, as amended.

Copies of the filing were served upon Public Utilities Commission of Ohio and the Public Service Commission of Indiana.

Comment date: May 20, 1986, in accordance with Standard Paragraph E at the end of this document.

9. Southern California Edison Company

[Docket No. ER84-75-009]

Take notice that on April 28, 1986, Southern California Edison Company tendered for filing a report of refunds made to its resale customers pursuant to the Commission's order dated March 7, 1986 granting Edison's motion to collect lower resale rates on an interim basis.

Comment date: May 19, 1986, in accordance with Standard Paragraph H at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10751 Filed 5-12-86; 8:45 am]

BILLING CODE 6717-01-M

Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol (Osborn Heirs Co.; Order Granting Request for Clarification)

[Docket No. RM85-1-000]

Issued: May 8, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On March 14, 1986, Osborn Heirs Company filed a request for clarification of the transitional provisions of Order No. 436¹ as they apply to a transportation transaction performed by Panhandle Eastern Pipe Line Company² under former § 157.209(a)(1) of the Commission's Regulations. We will grant Osborn's request.

Osborn, a producer, entered into an agreement to sell gas from wells in the Council Grove field in Kearny County, Kansas, to National Can Corporation, a high-priority end user. On April 3, 1985, Panhandle agreed to gather the gas from wells in the Council Grove field, transport the gas to the Council Grove compression station, and from that central point transport the gas to Indiana Gas Company, for ultimate delivery to National Can. The April 3

transportation agreement named individual well meter stations as points of receipt because Panhandle controlled the Council Grove field gathering facilities. On August 31, 1985, Osborn and Panhandle amended their transportation agreement to provide that "points of receipt . . . may be added, revised, or deleted from time to time [and such] [a]dditions, deletions, or revisions . . . shall not be considered amendments to this agreement." Transportation commenced before October 9, 1985. Under the terms of the April 3 transportation agreement as it existed on October 9, the transportation transaction can continue until October 3, 1986.

Osborn states that because of operational problems an imbalance of approximately 100,000 Mcf has occurred due to its inability to deliver the same quantities of gas to Panhandle as Panhandle has delivered to Indiana Gas.³ Osborn proposes to correct the imbalance before October 3, 1986, by adding new wells to the April 3 transportation agreement. Osborn requests clarification that Panhandle will not be subjected to the non-discriminatory access conditions of Order No. 436 if new wells are added after October 9.

Osborn argues that clarification should be granted because, as a result of the August 31, 1985 amendment, its wells now being added do not require post-October 9 amendments to the terms of the transportation agreement. In the alternative, Osborn argues that even if the addition of wells is deemed to be an amendment to the transportation agreement, clarification should be granted because the wells are being added to the non-jurisdictional gathering portion of Panhandle's service, while the interstate portion of the service remains unchanged. In particular, the central receipt point for that interstate service remains the same. Finally, Osborn argues that, since we have allowed imbalances to be corrected after the transportation transaction has terminated, we should allow it to correct an imbalance before the transportation terminates.

In examining the facts and circumstances of the instant case, we find that the transportation was authorized and service had commenced before October 9, 1985. We construe the August 31, 1985 amendment to mean that the new wells can be added (behind the central receipt point) without

¹ 33 FERC ¶61,007 (1985). FERC Statutes and Regulations ¶30,665 (1985).

² Panhandle has filed an answer in support of Osborn's request.

³ Osborn emphasizes that Panhandle's gas deliveries to Indiana Gas have not exceeded the levels negotiated in the April 3 agreement.

amending the transportation agreement. Thus, subsequent to October 9, 1985, there will be no amendment to the transportation agreement not any changes in either the central receipt point⁴ or in the volumes of gas transported. Therefore, we will grant Osborn's request for clarification and allow the transportation transaction to continue from the new wells.

By the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-10748 Filed 5-12-86; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 9097-001]

Mutual Energy Partnership; Surrender of Preliminary Permit

May 7, 1986.

Take notice that the Mutual Energy Partnership, Permittee for the Old Highway Project No. 9097, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9097 was issued on October 31, 1985, and would have expired on September 30, 1988. The project would have been located on the Big Wood River in Shoshone County, Idaho.

The Permittee filed the request on April 24, 1986, and the preliminary permit for Project No. 9097 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. 86-10746 Filed 5-12-86; 8:45 am]
BILLING CODE 6710-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1588]

Petitions for Reconsideration and Applications for Review of Actions in Rulemaking Proceedings

May 7, 1986.

Petitions for consideration and applications for review have been filed in the Commission rule making proceedings 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, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions and applications must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to oppositions must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 94 of the Commission's Rules and Regulations to Authorize Private Carrier Systems in the Private Operational-Fixed Microwave Radio Service. (PR Docket No. 83-426) Number of petitions received: 1

Subject: Amendment of Part 97 of the Commission's Rules to Permit Automatic Control of Amateur Radio Stations. (PR Docket No. 85-105, RM-4879) Number of petitions received: 1
Subject: WATS-Related and Other Amendments of Part 69 of the Commission's Rules (CC Docket No. 86-1) Number of petitions received: 2

Applications for Review Filed

Subject: Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Murray, Kentucky) (MM Docket No. 83-1122, RM-4342) Number of applications filed: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Pinetop, Arizona) (MM Docket No. 84-522, RM-4653) Number of applications filed: 1

Federal Communications Commission
William J. Tricarico,
Secretary.

[FR Doc. 86-10657 Filed 5-12-86; 8:45 am]
BILLING CODE 6712-01-M

Michael J. Bennis et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/state	File No.	MM Docket No.
A. Michael J. Bennis, Thoreau, NM.	BPH-850710MN.....	86-124
B. Lynn Johnston, d.b.a. California Media, Thoreau, NM.	BPH-850712RR.....	
C. Don R. Davis, Thoreau, NM.	BPH-850712RS.....	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have

been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

- Air Hazard, C
- Comparative, A,B,C
- Ultimate, A,B,C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

*Assistant Chief, Audio Services Division,
Mass Media Bureau.*

[FR Doc. 86-10652 Filed 5-12-86; 8:45 am]
BILLING CODE 6712-01-M

Joseph Wayne Collins et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/State	File No.	MM Docket No.
A. Joseph Wayne Collins et al., d.b.a. Collins Communications Co., Dimmitt, TX.	BPH-850617ML.....	86-166
B. Ken Braddick, Dimmitt, TX.	BHP-850712R5.....	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below each applicant's name, above, is used below to signify whether the issue

⁴ See Sohio Petroleum Company, 33 FERC ¶61,448 (1985).

in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A,B
2. Ultimate, A,B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-10654 Filed 5-12-86; 8:45 am]

BILLING CODE 6712-01-M

Contemporary Communications Limited Partnership et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutual exclusive applications for a new FM station:

Applicant, city/State	File No.	MM Docket No.
A. Contemporary Communications Limited Partnership, Marion, MS.	BPH-840801ID.....	86-167
B. Marion Broadcasting Co., Inc., Marion, MS.	BPH-841025ID.....	
C. Sherrie Powell, et al. d.b.a. Powell Communications, Marion, MS.	BPH-841029IE.....	
D. Wanda D. Cooper and Charles B. Cooper d.b.a. Charisma Radio Partners, Marion, MS.	BPH-841031ID.....	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), D
2. Comparative, A,B,C,D
3. Ultimate, A,B,C,D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue

1. To determine with respect to D (Charisma) whether, in light of the evidence adduced concerning the deficiency set forth below in paragraph 8¹, the applicant is financially qualified.

[FR Doc. 86-10653 Filed 5-12-86; 8:45 am]

BILLING CODE 6712-01-M

New North Broadcasters Limited Partnership et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/State	File No.	MM Docket No.
A. New North Broadcasters Limited Partnership, Amarillo, TX	BPH-840420IF.....	86-121
B. T. Kent Atkins d.b.a. Atkins Broadcasting, Amarillo, TX	BPH-840628ID.....	
C. Delbert Francis Ault, Amarillo, TX	BPH-840629IE.....	
D. Lewellyn Broadcasting, Corp. Amarillo, TX	BPH-840629IG.....	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown

¹ Paragraph 8 reads as follows:

The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

Applicant(s)	Deficiency
Charisma.....	Did not complete Section III, Item 2.

below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), A
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue

1. If an environmental impact statement is issued with respect to (A) New North which concludes that the proposed facility is likely to have an adverse effect on the quality of the environment,

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301-1.1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 86-10655 Filed 5-12-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New

Title: Cost/Benefit Study RE: Residential Sprinkler Systems with Quick Reacting Sprinkler

Abstract: The objective of this effort is to provide a study to the U.S. Fire Administration which would detail the cost/benefit for local government, builders, developers, installers, fire departments, the insurance industry, and property owners, who install residential sprinklers with response heads in different housing types.

Type of Respondents: Individuals or Households, State or local governments, Businesses or other for-profit

Number of Respondents: 1,335
Burden Hours: 3,004

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: May 7, 1986

Walter A. Ginstantas,

Director, Administrative Support.

[FR Doc. 86-10673 Filed 5-12-86; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New

Title: Survey of Contractor Responsibility

Abstract: Form is to collect financial and historical data on prospective contractors to assist the Contracting Officer in making a determination of responsibility.

Type of Respondents: Individuals or Households, Businesses or other for-profit, Small businesses or organizations

Number of Respondents: 300
Burden Hours: 450

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA,

Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington DC 20503.

Dated: May 7, 1986.

Walter A. Ginstantas,

Director, Administrative Support.

[FR Doc. 86-10674 Filed 5-12-86; 8:45 am]

BILLING CODE 6718-01-M

Redelegation of Authority With Respect to the National Flood Insurance Program and the Federal Crime Insurance Program

AGENCY: Federal Emergency Management Agency, Federal Insurance Administration.

ACTION: Redelegation of Authority of Federal Insurance Administrator.

FOR FURTHER INFORMATION CONTACT:

James M. Rose, Jr., Executive Assistant to the Administrator, Federal Emergency Management Agency, Federal Insurance Administration, 500 "C" Street SW., Washington, DC 20472, telephone number (202) 646-2780.

Notice is hereby given that pursuant to § 2.51 of Title 44 of the Code of Federal Regulations, Harold T. Duryee, Special Assistant to the Administrator, is hereby authorized to exercise the delegation of authority set forth at § 2.64 of Title 44 of the Code of Federal Regulations and is designated to serve as Acting Federal Insurance Administrator, with all the powers, functions, and duties delegated or assigned to the Federal Insurance Administrator.

Authority: Section 2.51 of Title 44 of the Code of Federal Regulations.

EFFECTIVE DATE: This delegation and designation shall be effective as of May 11, 1986.

Dated: May 1, 1986.

Julius W. Becton, Jr.,

Director.

[FR Doc. 86-10677 Filed 5-12-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 86-18]

Container Distribution, Inc. v. Neptune Orient Lines, Ltd.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Container Distribution, Inc. (CDI) against Neptune Orient Lines, Ltd. (NOL) was served May 7, 1986. CDI alleges that NOL has violated sections 8(c), 10(b)(5) and 10(b)(12) of the Shipping Act, 1984 through its failure to make available to CDI, as an alleged

similarly situated shipper, the terms of a service contract.

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 7, 1987, and the final decision of the Commission shall be issued by September 8, 1987.

John Robert Ewers,

Secretary.

[FR Doc. 86-10695 Filed 5-12-86; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public, Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages, Application; for Certificate [Casualty]

Notice is hereby given that the following persons have applied to the Federal Maritime Commission for a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Hapag-Lloyd Kreuzfahrten GmbH,
Bremen, c/o Hapag-Lloyd (America)
Inc., One Edgewater Plaza, Staten
Island, NY 10305

Dated: May 8, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-10696 Filed 5-12-86; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public, Indemnification of Passengers for Nonperformance of Transportation; Application for Certificate [Performance]

Notice is hereby given that the following persons have applied to the

Federal Maritime Commission for a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Hapag-Lloyd Kreuzfahrten GmbH,
Bremen, c/o Hapag-Lloyd (America)
Inc., One Edgewater Plaza, Staten
Island, NY 10305

Dated: May 8, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-10697 Filed 5-12-86; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 86-11]

Neutral Container Rule—U.S. Atlantic-North European Conference; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies determined that Docket No. 86-11 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

On April 4, 1986, the Commission instituted an investigation into the practices governing use of neutral containers by the U.S. Atlantic-North European Conference (ANEC). This investigation will examine, among other things, Tariff Rule 21.J of ANEC's Intermodal Freight Tariff No. FMC-1 (Rule). The Rule relates to use of containers which are not owned or leased by carriers prior to delivering to the shipper for loading.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the *Federal Register* unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection upon request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573, telephone (202) 523-5725.

John Robert Ewers,

Secretary.

[FR Doc. 86-10693 Filed 5-12-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

American National Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 6, 1986.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *American National Corporation*, Omaha, Nebraska; to merge with *American Commerce Bancshares, Inc.*, Omaha, Nebraska. In connection with this application, *American Commerce Bancshares* has applied to become a bank holding company by acquiring 100 percent of the voting shares of *Financial Group Humboldt, Inc.*, Humboldt, Nebraska, and thereby indirectly acquire *Home State Bank and Trust Company*, Humboldt, Nebraska, and by acquiring 100 percent of the voting shares of *Financial Group Elk Creek, Inc.*, Humboldt, Nebraska, and thereby indirectly acquire *Johnson County Bank*, Elk Creek, Nebraska, and by acquiring 100 percent of the voting shares of *Financial Group Dawson, Inc.*, Humboldt, Nebraska, and thereby indirectly acquire the *Dawson Bank*, Dawson, Nebraska.

2. *First Canon Bancorp, Inc.*, Canon City, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of *The First*

National Bank of Canon City, Canon City, Colorado.

Board of Governors of the Federal Reserve System, May 8, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10726 Filed 5-12-86; 8:45 am]

BILLING CODE 6210-01-M

CNB Holding Co. 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 June 5, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *CNB Holding Company*, Daytona Beach, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of *Commercial National Bank*, Daytona Beach, Florida.

2. *First State Bancshares of Blakely, Inc.*, Blakely, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of *First State Bank of Blakely*, Blakely, Georgia.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Prairie Bankshares, Inc.*, Georgetown, Illinois; to acquire 100

percent of the voting shares of The First National Bank of Ogden, Ogden, Illinois.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Omni Bancorp, Inc.*, Effingham, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Crossroads Bank, Effingham, Illinois.

D. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Marquette County Financial Corporation*, Negaunee, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Negaunee, Negaunee, Michigan.

Board of Governors of the Federal Reserve System, May 8, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10744 Filed 5-12-86; 8:45 am]

BILLING CODE 6210-01-M

J.P. Morgan & Co., Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would

not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 30, 1986.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *J.P. Morgan & Co., Incorporated*, New York, New York; to engage *de novo* in providing discount brokerage services, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 8, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10745 Filed 5-12-86; 8:45 am]

BILLING CODE 6210-01-M

United Banks of Colorado, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) of 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition; or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for hearing on this question must be accompanied by a statement of the

reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1986.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Banks of Colorado, Inc.*, Denver, Colorado, to engage *de novo* through its subsidiary United Banks Financial Services Corporation, Denver, Colorado, in making and servicing loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 8, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-10727 Filed 5-12-86; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

May 7, 1986.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the *Federal Register*.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number of the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Martha Bethea—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3181).

Proposal to Approve Under OMB Delegated Authority the Extension Without Revision of the Following Reports

1. Report title: Regulation G Registration Statement for Persons Who Extend Credit Secured by Margin Stock (Other Than Banks and Brokers or Dealers)

Agency form number: FR G-1
OMB Docket number: 7100-0011
Frequency: On occasion

Reporters: Federal and state credit unions; insurance companies; savings and loan associations; commercial and consumer credit organizations; production credit associations; small businesses; etc.

Small businesses are affected.

General description of report:

This information collection is mandatory [15 U.S.C. 78g, 78w]; and is given confidential treatment [5 U.S.C. 552 (b)(4), (b)(6)].

This report is needed to elicit certain background and financial information

about a lender (other than banks and brokers or dealers) and the types and amount of credit activities engaged in with respect to stock market credit which enables the Federal Reserve to identify those lenders subject to Regulation G.

2. Report title: Deregistration Statement For Persons Registered Pursuant to Regulation G

Agency form number: FR G-2
OMB Docket number: 7100-0011
Frequency: On occasion

Reporters: Regulation G Registered Lenders (federal and state credit unions; insurance companies; etc.)
Small businesses are affected.

General description of report:

If a registered lender chooses to deregister, this information collection is mandatory [15 U.S.C. 78g, 78w]; and is not given confidential treatment.

This report is necessary to notify the Federal Reserve System that a respondent, which must be a Regulation G registered lender, wishes to and is eligible to deregister.

3. Report title: Annual Report
Agency form number: FR G-4
OMB Docket number: 7100-0011
Frequency: Annually

Reporters: Every Regulation G registrant (federal and state credit unions; insurance companies; etc.)
Small businesses are affected.

General description of report:

This information collection is mandatory [15 U.S.C. 78g, 78w]; and is given confidential treatment [5 U.S.C. 552 (b)(4), (b)(6)].

This report is necessary of all lenders registered pursuant to Regulation G in order to enable the Federal Reserve to monitor the amount of stock-secured credit extended by such lenders and to aid the Federal Reserve in administering margin requirements pursuant to the Securities Exchange Act of 1934.

4. Report title: Statement of Purpose for an Extension of Credit Secured by Margin Securities by a Person Subject to Registration Under Regulation G

Agency form number: FR G-3
OMB Docket number: 7100-0018
Frequency: On occasion

Reporters: Federal and State credit unions; insurance companies; savings and loan associations; commercial and consumer credit organizations; small businesses; etc.

Small businesses are affected.

General description of report:

This information collection is mandatory [15 U.S.C. 78g, 78w]; and is not given confidential treatment.

This report is required to ensure that a lender does not extend credit to

purchase or carry securities in excess of the amount permitted by the Federal Reserve Board pursuant to Regulation G.

5. Report title: Statement of Purpose for an Extension of Credit by a Creditor
Agency form number: FR T-4
OMB Docket number: 7100-0019

Frequency: On occasion
Reporters: Brokers and dealers
Small businesses are affected.

General description of report:

This information collection is mandatory [15 U.S.C. 78g, 78w]; and is not given confidential treatment.

This report provides a written record of the amount of "non-purpose" credit being extended, the purpose for which the money is to be used, and a listing and valuation of collateral. The form provides a uniform method by which the broker/dealer can establish its compliance with the statute and with the Board's regulation permitting "non-purpose credit" to be extended on better terms than are available for securities credit.

Proposal to Approve Under OMB Delegated Authority the Implementation of the Following Report

1. Report title: 1986 Survey of Consumer Finances

Agency form number: FR 3038
OMB Docket number: 7100-0220
Frequency: Nonrecurring

Reporters: Sample of households nationwide
Small businesses are not affected.

General description of report:

This information collection is voluntary [12 U.S.C. 225a, 1828(c), 1842, 1843; 15 U.S.C. 1693b(a)]. No problem of confidentiality arises since names and other characteristics that would permit personal identification of respondents will not be provided to survey sponsors.

This survey, a follow-up to an earlier survey, will collect data on major financial decisions and significant changes affecting the financial conditions of households. The survey is designed to provide basic information on financial behavior that can be applied to analysis of current and future policy issues.

Proposal to Approve Under OMB Delegated Authority the Extension With Revision of the Following Report

1. Report title: Weekly Report of Selected Borrowings

Agency form number: FR 2415
OMB Docket number: 7100-0074
Frequency: Weekly

Reporters: Depository institutions
Small businesses are not affected.

General description of report:

This information collection is voluntary [12 U.S.C. 248(a)(2)]; and is given confidential treatment [5 U.S.C. 552(b)(4), and (b)(8)].

The report collects data on federal funds and repurchase agreement (RP) transactions at a sample of large commercial banks. The proposed revision would include the collection of RP information from a sample of large thrift institutions. The information is used in the analysis and formulation of monetary policy.

Board of Governors of the Federal Reserve System, May 7, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-10656 Filed 5-12-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement for a Project To Study the Human Health Consequences of Poly-Brominated Biphenyls (PBB) Contamination in Michigan; Availability of Funds for Fiscal Year 1986

Introduction

The Centers for Disease Control announces the availability of funds in Fiscal Year 1986 to continue a cooperative agreement with the Michigan Department of Public Health to study the human health consequences of exposure to poly-brominated biphenyls (PBB) in farms in Michigan with particular emphasis on cancer incidence.

Authority

This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241[a]), as amended. Catalog of Federal Domestic Assistance Number 13.283.

Background

This is not a formal request for applications. Assistance will be provided only to the Michigan Department of Public Health for the continued conduct of this project. The Michigan Department of Public Health and the Centers for Disease Control with assistance and funding from the National Cancer Institute and the National Institute for Environmental Health Sciences, NIH, the Food and Drug Administration, and the Environmental Protection Agency, have collaborated in the conduct of this study of the unique exposure of Michigan farm residents to PBB since 1976.

Availability of Funds

It is expected that \$339,000 will be available during Fiscal Year 1986 to support this project. Funding is subject to change and estimates may vary. The cooperative agreement will be funded for 12 months with a 5-year project period. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds.

Information

Information may be obtained from Luther E. DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262-6575 or FTS 236-6575.

Dated: May 6, 1986.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86-10698 Filed 5-12-86; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 86F-0163]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp., has filed a petition proposing that the food additive regulations be amended to provide for additional uses of calcium bis(monoethyl)3,5-di-*tert*-butyl-4-hydroxybenzyl phosphonate] as a stabilizer in articles or components of articles intended to contact food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1785 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 6B3920) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for additional uses of calcium bis(monoethyl)3,5-di-*tert*-butyl-4-hydroxybenzyl phosphonate] as a

stabilizer in articles or components of articles intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: May 1, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-10670 Filed 5-12-85; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-374-PN]

Medicare Program; End-Stage Renal Disease Program; Composite Rates and Methodology for Determining the Rates

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

ACTION: Proposed notice.

SUMMARY: This notice proposes a revised methodology for determining the composite rates for prospective payment for outpatient maintenance dialysis services and sets forth proposed rates based on the revised methodology. The new rates would be based on the most recent audits (1983) of facility costs. Additionally, in computing the rates we would use the new HCFA gross hospital wage index as published in the **Federal Register** on September 3, 1985 (50 FR 35646). This index reflects the latest Metropolitan Statistical Areas designated by the Executive Office of Management and Budget.

DATES: 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 12, 1986.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-374-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-374-PN. Comments 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: Daniel Driscoll, (301) 597-1804.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1881(b) of the Social Security Act (the Act) requires the Secretary to pay for outpatient maintenance dialysis services under a prospective payment system that promotes home dialysis. This payment system must either pay for home dialysis under composite rates (that is, the same rate is paid for dialysis at home as in a dialysis facility) or use some other method that, after detailed analysis, is determined to be more efficient and promote home dialysis more effectively.

On February 12, 1982, a notice of proposed rulemaking was published in the *Federal Register* (47 FR 6556) that proposed a prospective, composite rate payment system for outpatient maintenance dialysis that would implement section 1881(b) of the Act. Under that proposal, each facility was to receive a certain payment rate per treatment, adjusted for geographic wage differences, regardless of whether the treatment was furnished in the facility or at the patient's home. We proposed to set separate rates for hospital-based and for independent dialysis facilities.

On May 11, 1983, we published a final rule (48 FR 21254) that changed some of the elements of the February 12, 1982 proposed rule and that incorporated updated information on geographic wage differences. As a result, the average payment rates were projected to be \$126.59 per treatment for independent facilities and \$130.59 per treatment for hospital-based facilities. These average payment rates were calculated based on the overall effect of the geographic wage indexes in the per-treatment base rates of \$122.91 for independent facilities and \$126.76 for hospital-based facilities.

The regulation on payment for outpatient maintenance dialysis treatments is located at 42 CFR 405.439. This regulation does not include actual payment rates but does set forth the

procedure for promulgating rates. Under § 405.439(i)(2), a notice must be published in the *Federal Register* (with opportunity for prior public comment) when payment rates are changed as a result of a change in the methodology for setting the rates. Since we are proposing to change the methodology for setting the rates, we are publishing a proposed notice.

The final rule published May 11, 1983, provided for a transition period during which no facility's payment rate could exceed \$138 per treatment, and no facility's payment rate could be calculated using a wage index of less than 0.9. We propose to extend the application of these maximum and minimum rate limitations indefinitely.

II. Proposed Changes

This proposed notice would provide for the following:

- In determining the composite rate, the facilities' median costs would be weighted by the number of treatments in each stratum (a statistical grouping of facilities based on the number of dialysis stations in each facility) rather than weighting by the number of facilities in each stratum.

- We would update the composite rates for independent and hospital-based facilities using the most recent audit data on the costs of in-facility and home dialysis and the most recent average national percentages of home dialysis patients.

- We would use the HCFA gross hospital wage index described in the prospective payment system regulation published in the September 3, 1985 *Federal Register* (50 FR 35661) to replace the urban and rural wage indexes that were published in the May 11, 1983 final rule.

As a result of publishing this notice in final, the revised base composite rates for outpatient maintenance dialysis would be calculated to be \$113.47 for independent facilities, and \$117.89 for hospital-based facilities. Wage indexes would be applied to these base rates, resulting in estimated average payment rates of \$115.40 for independent facilities and \$119.70 for hospital-based facilities.

We are also considering changes to other parts of the rate-setting methodology, and we are soliciting public comment on the factors listed below. None of the changes listed has been employed in computing the rates shown above. However, if any or all of these changes were implemented, they would lower the rates shown.

- *The 105 percent multiplier for setting the hospital-based facility rate.* Currently, the hospital rate is set in part

by multiplying the median cost of furnishing dialysis for all facilities by 105 percent. Originally, this multiplier accommodated the possibility that our methodology might have failed to recognize legitimate hospital costs and the fact that deficiencies in our data would have affected hospital-based facilities more than independents. We invite comments on whether these or other considerations warrant continuation of the use of the 105 percent multiplier for hospital-based facilities.

- *Percentage of home patients.* Currently, the rate is set by weighting the costs of home dialysis by the national percentage of home dialysis patients in independent and hospital-based facilities, respectively. Because the cost of home dialysis is lower than that of in-facility dialysis, the higher the percentage of home patients, the lower the overall rate. Originally, we did not include any projections of data in the rate-setting methodology. However, we are now considering the possibility of trending our current data forward into 1966 and using these projected percentages to set the rates. We specifically request comments on this proposal.

- *Hospital overhead add-on factor.* Currently, the independent facility rate is set based on the median costs of all facilities, including hospital-based facilities. The hospital-based facility rate is set in part by determining the difference between the median overhead costs of all facilities versus the median overhead costs of hospital-based facilities taken alone. This difference is then added to the median cost for all facilities and used to set the base rate for hospital-based facilities.

Using current data, the overhead factor would result in an add-on of \$4.65 for the hospital rate. This figure is reflected in the rates shown above. We are considering, however, basing the independent facility rate on the overhead costs of only independent facilities and determining the overhead add-on by taking the difference between the median overhead cost of the independent facilities taken alone versus the median overhead cost of the hospital-based facilities taken alone. We are considering this change because we question whether it is appropriate to base the independent facility rate in part on overhead costs incurred by hospital-based facilities. Because independent facilities have lower overhead costs than hospital-based facilities, this change would have the effect of lowering the rate for independent facilities while leaving the hospital-

based facility rate constant. We specifically request comments on this proposal.

III. Revised Composite Rates Based on Facility Audits

This section contains a brief explanation of how the composite rates would be established and a discussion of the revised rates for independent and hospital-based facilities based on audits of facilities' costs. (The audit data are available for public review upon request from the contact person listed above.)

A. Methodology for Ratesetting

1. Computation of Rates in 1983.

The methodology published in the final rule on May 11, 1983 provided separate rates for hospital-based and independent facilities. The rates were based on a national audit conducted in 1981 and were computed by taking the median labor and nonlabor costs for infacility and home dialysis treatments and then weighting these costs by the percentage of patients dialyzing at each location. The rates for independent facilities were based on the median costs of all facilities adjusted by the national average percentage of home dialysis patients served by independent facilities. The rates for hospital-based facilities were based on the median labor and nonlabor costs of all facilities adjusted by the national average percentage of home dialysis patients served by hospital-based facilities plus two additional amounts: a differential for the increased overhead incurred by hospital-based facilities (\$2.10) and an overall addition of five percent. We made the \$2.10 adjustment in the initial rate calculation to accommodate the allocation of excess overhead costs to hospital-based outpatient dialysis units that may result from Medicare cost-finding and reporting procedures.

We used home patient percentages of 23.5 percent for hospitals and 10.5 percent for independent facilities to construct the composite rates.

We did not make any adjustment in the case of the independent facilities but rather used the median cost levels for all facilities. This amount was higher than the median for independent facilities alone. (The median cost for all facilities combined was about \$129 per treatment, compared to \$107 for the independent facilities alone.)

2. Proposed Change to Methodology

The only change from the methodology published in the May 11, 1983 *Federal Register* would be that we would weight the median labor and nonlabor cost per treatment for each

stratum by the number of treatments furnished by the facilities in that stratum. We would weight by treatments because this is a more accurate measure of the median cost per dialysis treatment. The previous methodology measured the median cost per facility, rather than the median cost per dialysis treatment. We would continue to set the rate for hospital-based facilities at 105 percent of the median costs for all facilities. However, this policy will be specifically considered again when any further modifications to the rate or rate methodology are considered. It is appropriate to use an adjustment for hospital-based facilities and not for independent facilities because hospitals incur higher costs, whereas most independent facilities incur costs below the payment rate we propose to set. We would also continue to add an amount to the nonlabor portion of the hospitals' infacility costs, which our audit data revealed as the difference between the median overhead costs of hospitals alone and the median of the combined sample of hospitals and independent facilities.

The 1983 audits, discussed below, confirm the results of earlier audits in showing that the costs of the overall dialysis service have not followed general inflation. Furthermore, the prospective composite rate system is intended to emphasize future incentives rather than past or present costs. Taking into account estimated adjustments for disallowances normally associated with auditing, unaudited cost data for 1984 reported the same independent facilities that were in the 1983 national audit, indicate that costs are continuing to decline. Accordingly, the proposed rate-setting methodology does not include a specific inflation factor.

The fact that the number of dialysis facilities continues to increase supports this policy. There were 606 facilities when the program began on July 1, 1973. Since May 11, 1983, the date we published final regulations for the ESRD composite rate, there have been 177 new facilities. Currently, there are 1,380 certified renal facilities that furnish outpatient maintenance dialysis. We can infer from this growth that the composite rate payment system has not discouraged the entry of new providers of dialysis services. Moreover, the composite rate structure continues to offer incentives to transfer appropriate patients to less costly home dialysis and to implement other cost-saving efficiencies.

B. Sample Design and Audit

1. Sample Design

In selecting the ESRD facilities to be audited, two separate audit samples were used. For infacility outpatient maintenance dialysis costs, the facilities to be audited were scientifically selected from a list of facilities certified to furnish outpatient maintenance dialysis services. We then separated the facilities into two groups: hospital-based and independent. Within each group, three strata were formed using the number of certified dialysis stations as the boundaries. Twenty-one facilities were then selected from each of the six strata for a total sample size of 126 facilities.

For home dialysis costs, we selected all facilities that had target rate reimbursement agreements for their home dialysis services and that furnished dialysis to at least five home patients. There were 15 of these facilities and none of them were part of the 126 facilities selected for the audit of infacility dialysis costs. Only those 15 facilities have incurred costs for the total scope of home dialysis items and services covered by the composite rate.

In total, 143 facilities were to be audited. In revising the composite rate payment, we only used the audited cost data of 132 ESRD facilities. The reasons for the difference are—

- Four hospitals provided inpatient dialysis treatment only;
- Two facilities had no available records;
- Two facilities treated less than the equivalent of one patient per year;
- Two facilities had no home dialysis costs; and
- One facility was terminated from the program.

2. Audits

The audits were conducted in the fall of 1983. In most cases, the designated Medicare intermediary for the ESRD either directly performed the audit or was responsible for subcontracting the audit. The Office of the Inspector General (OIG) audited four ESRD facilities and the home office of a chain of independent facilities. Intermediaries were instructed to examine the most recently filed ESRD facility cost report. In the majority of cases, intermediaries examined the sampled ESRD facilities' cost reports for fiscal years ending between July 31, 1982 and June 30, 1983. This tied the audit of hospitals' base periods (required for the implementation of Medicare's prospective payment system) to the audit of their dialysis costs, thereby substantiating that the

costs allocated to the renal department of the hospital were correct.

We determined reasonable costs of the audited facilities in accordance with the principles of reimbursement as described in § 405.441.

The audits resulted in net adjustments to independent facilities' costs that reduced their reported outpatient maintenance dialysis cost by 17.7 percent as compared to a net reduction of 15 percent under the 1981 audits used in setting the composite rates published May 11, 1983. After adjustments, the median independent cost per treatment was approximately \$104. Independent ESRD facilities' audited costs per treatment ranged from a low of \$74 to a high of \$188.

Audit adjustments made to hospital-based facilities resulted in net adjustments that reduced hospital costs by 3.9 percent, 0.9 percent more than those costs had been reduced under the 1981 audits. The median hospital audited cost per treatment was approximately \$141, with a low of \$89 and a high of \$261.

The audits of home dialysis services showed that the average cost per treatment for home dialysis had dropped from \$97 per treatment in the 1981 audits to \$85 per treatment in 1983.

After the audits were completed, we performed the following steps on the data.

- We organized the data by the sample strata, as described above in section II. B. 1.

- From each facility's audited total outpatient maintenance dialysis costs, we—

- Verified that all physicians' direct patient care services were eliminated from reported costs; and

- Eliminated any excessive compensation paid to an administrator or to a medical director.

- For each facility that did not report laboratory costs (for example, where laboratory services were reimbursed directly through an independent laboratory and not through the facility), we added an adjustment amount to represent the cost of routine ESRD laboratory tests.

- For each facility, we divided the resulting net total outpatient dialysis costs by the corresponding number of outpatient maintenance dialysis treatments. This gave us a net total cost per treatment (CPT) for each facility.

- We divided each facility's net total cost per treatment into a labor and a nonlabor component.

- To adjust for geographic wage differences, we divided each facility's

labor CPT by the appropriate value from the HCFA gross hospital wage index.

- For each stratum, we computed the median labor and nonlabor cost per treatment.

- We then multiplied the respective median values by the total number of treatments furnished by all facilities within each stratum.

- We summed the above results for the labor and the nonlabor cost components and for the number of treatments. We then divided the labor and the nonlabor components by the total number of treatments to arrive at the median outpatient treatment cost.

3. Audit Results

Applying the principles described above to the data from our audits of facility and home dialysis costs resulted in the following figures:

MEDIAN COSTS PER TREATMENT

Location of dialysis	Adjusted labor	Non-labor	Total
All Facilities.....	\$53.17	\$64.70	\$117.87
Independents.....	42.77	60.84	103.61
Hospitals.....	70.97	70.98	141.05
Home.....	17.25	67.99	85.24
Overhead cost differential of hospitals over all facilities.....			4.65

C. Revised Home Treatment Percentage

Based on the December 31, 1984 facility survey data from HCFA's ESRD Medical Information System, the location of dialysis patients is as follows:

LOCATION OF PATIENTS (PERCENT)

Type of facility	Home	In facility
Independent.....	13.5	86.5
Hospital-based.....	27.5	72.5

If updated information from the December 31, 1985 facility survey is available when we develop the final notice, we will consider using the more recent data in the final notice.

D. Calculation of Rates

1. Deriving the Independent Base Rate Components

- We would compute the nonlabor composite cost component by multiplying the nonlabor cost per treatment for all facilities by the national percentage of independent facility patients dialyzing on an outpatient basis in the facility (86.5 percent), and adding the result to the product of the median nonlabor cost of home dialysis and the national percentage of independent facility patients dialyzing at home (13.5 percent).

$$(\$64.70 \times .865) + (\$67.99 \times .135) = \$65.15$$

- We would compute the labor composite cost component by multiplying the adjusted labor costs for all facilities by the national percentage of independent facility patients dialyzing on an outpatient basis in the facility (86.5 percent), and adding the result to the product of the median adjusted labor cost of home dialysis and the national percentage of independent facility patients dialyzing at home (13.5 percent).

$$(\$53.17 \times .865) + (\$17.25 \times .135) = \$48.32$$

Therefore, the base rate components for independent facilities would be as follows:

Labor Component.....	\$48.32
Nonlabor Component.....	\$65.15

2. Deriving the Hospital-Based Facility Rates

- We would compute the nonlabor composite cost component in several steps. First, we would add the hospital overhead cost differential to the nonlabor cost per treatment for all facilities. We then would multiply this by 1.05 (105 percent) and by the national percentage of hospital-based facility patients who dialyze in the facility (72.5 percent). We would add the result to the product of the nonlabor cost per treatment of home dialysis multiplied by 1.05 and by the national percentage of hospital-based facility patients who dialyze at home (27.5 percent).

$$((\$4.65 + \$64.70) \times 1.05 \times .725) + (\$67.99 \times 1.05 \times .275) = \$72.43$$

- We would compute the labor composite cost component by multiplying the adjusted labor cost per treatment for all facilities by 1.05 (105 percent) and by the national percentage of hospital-based facility patients who dialyze in the facility (72.5 percent), and adding the result to the product of the labor cost per treatment of home dialysis multiplied by 1.05 and by the national percentage of hospital-based facility patients who dialyze at home (27.5 percent).

$$(\$53.17 \times 1.05 \times .725) + (\$17.25 \times 1.05 \times .275) = \$45.46$$

Therefore, the base rate components for hospital-based facilities would be as follows:

Labor Component.....	\$45.46
Nonlabor Component.....	\$72.43

3. Prospective Payment Rates

As described above, we would derive the basic components from which individual facilities' rates would be computed.

BASE RATES

Facilities	Components		Total base rate
	Labor	Nonlabor	
Independent.....	\$48.32	\$65.15	\$113.47
Hospital-based.....	45.46	72.43	117.89

To compute an individual facility's composite rate, we would multiply the labor component for the type of facility (independent or hospital-based, as the case may be) by the HCFA gross hospital wage index value that applies in the area where the facility is located (see section IV below). We would add the result to the corresponding nonlabor base component and derive the facility's rate. We propose to continue the upper payment level of \$138 and the lower payment level such that no facility's payment rate would be calculated using a wage index value of less than 0.9.

Since the actual payment for each facility would be calculated by adjusting the labor component of the base rate by the appropriate wage index value, the actual average payment (\$115.40 for independent facilities and \$119.70 for hospitals) would be higher than the base rate, because most ESRD facilities are located, and most treatments are furnished, in areas that have a wage index value greater than one.

IV. Other Information

The policies regarding payment for peritoneal dialysis, self-care training, and home dialysis would remain the same as they were published in the final rule on May 11, 1983 (48 FR 21254). Below is a brief summary of those provisions.

A. Prospective Payment Rates for Peritoneal Dialysis

1. Intermittent Peritoneal Dialysis (IPD)

In the May 11, 1983 final rule (48 FR 21272), we established an equivalency rate for IPD. IPD sessions of 30 hours or more duration furnished once per week are paid for at a rate equivalent to three times the facility's composite rate per hemodialysis treatment. IPD sessions of 20 hours or more, but less than 30 hours in duration, furnished twice per week, are paid at a rate equivalent to one and one-half times the facility's composite rate per hemodialysis treatment. IPD sessions of less than 20 hours duration are paid at the same rate as the facility's composite rate per hemodialysis treatment. The above IPD rates are established exclusive of any exception amounts that may have been granted to the facility for hemodialysis.

2. Continuous Ambulatory Peritoneal Dialysis (CAPD) and Continuous Cycling Peritoneal Dialysis (CCPD)

In the May 11, 1983 final rule, we established equivalency rates for CAPD and CCPD (48 FR 21272). CAPD is furnished on a continuous basis, not in discrete sessions, and therefore, we cannot pay on a per session basis. We will pay for CAPD on a weekly basis, setting the weekly payment rate for CAPD at three times the per treatment composite payment rate (corresponding to the usual hemodialysis schedule of three sessions per week), for the ESRD facility through which monitoring and support services are furnished. We will pay for CCPD and similar techniques on the same basis.

B. Rates for Self-Care Dialysis Training

Self-care dialysis training is a program that trains ESRD patients to perform dialysis in the facility or in the home with little or no professional assistance, and trains other individuals to assist patients in performing dialysis. In the May 11, 1983 final rule, we established a rate for each self-dialysis and home dialysis training session (except for CAPD) at the amount equal to the facility's composite rate for outpatient maintenance hemodialysis (excluding any exception amounts) plus an additional \$20 per session. CAPD training sessions are paid at a rate equal to the facility's outpatient maintenance hemodialysis composite rate plus an additional \$12 per session. We will continue to review data contained in ESRD facilities' cost exports and requests for exceptions to determine whether these amounts should be changed.

C. Home Dialysis

1. Reimbursement Options for Home Dialysis

Home dialysis patients have a choice of two methods of payment for their home dialysis. They may choose to have the facility receive the same composite rate per treatment as it receives for its in-facility dialysis treatments, or they may choose to bill directly for the costs of supplies and equipment. Composite rate payment (to a facility) is known as "Method I", and direct payment is known as "Method II". Currently, 82 percent of the program's home dialysis patients have chosen Method I, and 18 percent have chosen Method II.

2. Rate Adjustment for Home Dialysis Equipment Purchased Under a 100 Percent Reimbursement Agreement

Prior to August 1, 1983 (the effective date of the May 11, 1983 final rule),

home dialysis equipment could be paid for at full cost (that is, without regard to the usual Medicare Part B deductible and coinsurance amounts) under a 100 percent reimbursement agreement (see §§ 405.438 and 405.690). In the May 11, 1983 final rule, we eliminated this provision for equipment furnished under the agreement after July 31, 1983. To account for equipment furnished under the agreement prior to August 1, 1983, we reduce the composite rate payment for home dialysis treatments furnished to any home dialysis patient using the equipment by \$12 per treatment.

V. Revised Urban and Rural Wage Indexes

The ESRD final rule published on May 11, 1983 (48 FR 21254) set forth urban and rural wage indexes that were developed using data from the Bureau of Labor Statistics. On September 3, 1985, we published a final rule (50 FR 35661) that modified the Medicare inpatient hospital prospective payment system and included the HCFA gross hospital wage index. We developed the HCFA gross hospital wage index from a special survey of acute care hospitals subject to the prospective payment system. The HCFA gross hospital wage index was designed to correct the inability of the previous Bureau of Labor Statistics measures to account for local differences in part-time hospital employment. Because this is a more accurate measure of local wage variations than the previous BLS wage index, and because independent facilities are in competition with hospitals for the same dialysis personnel, we are also applying the HCFA gross hospital wage index to independent dialysis facilities.

We propose to use the HCFA gross hospital wage index to compute individual facilities' composite rates. However, the gross wage index value of .8198 that was published September 3, 1985 for the Lynchburg, Virginia MSA is incorrect. Although the gross wage index values were to have been developed exclusively from records from short-term acute care hospitals, we have discovered that the published Lynchburg MSA wage index was inappropriately derived from survey records that included data from a State Mental health hospital with an acute care subunit and skilled nursing facility. As this provider should have been excluded from the wage index survey data base, we have recalculated the Lynchburg, Virginia MSA gross wage index to reflect the correct figures. The corrected gross wage index value is .9148.

The HCFA gross hospital wage index reflects the latest Metropolitan Statistical Areas designated by the Executive Office of Management and Budget including the changes that were announced on June 27, 1985 and were effective June 30, 1985. A discussion of the legislative background and development of the HCFA gross hospital wage index can be found in the preamble to the September 3, 1985 final rule (50 FR 35661). We are reprinting the index below for the convenience of the reader.

WAGE INDEX FOR URBAN AREAS

WAGE INDEX FOR URBAN AREAS—
ContinuedWAGE INDEX FOR URBAN AREAS—
Continued

Urban area (constituent counties or county equivalents)	Wage index
Abilene TX.....	.8937
Taylor, TX.....	
Akron, OH.....	1.1000
Portage, OH.....	
Summit, OH.....	
Albany, GA.....	.8124
Dougherty, GA.....	
Lee, GA.....	
Albany-Schenectady-Troy, NY.....	.9278
Albany, NY.....	
Greene, NY.....	
Montgomery, NY.....	
Rensselaer, NY.....	
Saratoga, NY.....	
Schenectady, NY.....	
Albuquerque, NM.....	1.0998
Bernalillo, NM.....	
Alexandria, LA.....	.9102
Rapides, LA.....	
Allentown-Bethlehem, PA-NJ.....	1.0379
Warren, NJ.....	
Carbon, PA.....	
Lehigh, PA.....	
Northampton, PA.....	
Altoona, PA.....	.9950
Blair, PA.....	
Amarillo, TX.....	.9526
Potter, TX.....	
Randall, TX.....	
Anaheim-Santa Ana, CA.....	1.2528
Orange, CA.....	
Anchorage, AK.....	1.5735
Anchorage, AK.....	
Anderson, IN.....	.9185
Madison, IN.....	
Anderson, SC.....	.8309
Anderson, SC.....	
Ann Arbor, MI.....	1.2515
Washtenaw, MI.....	
Anniston, AL.....	.8457
Calhoun, AL.....	
Appleton-Oshkosh-Neenah, WI.....	1.0671
Calumet, WI.....	
Outagamie, WI.....	
Winnebago, WI.....	
Asheville, NC.....	.8780
Buncombe, NC.....	
Athens, GA.....	.8120
Clarke, GA.....	
Jackson, GA.....	
Madison, GA.....	
Oconee, GA.....	
Atlanta, GA.....	.9594

Urban area (constituent counties or county equivalents)	Wage index
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.....	1.0489
Atlantic, NJ.....	
Cape May, NJ.....	
Augusta, GA-SC.....	.9533
Columbia, GA.....	
McDuffie, GA.....	
Richmond, GA.....	
Aiken, SC.....	
Aurora-Elgin, IL.....	1.0936
Kane, IL.....	
Kendall, IL.....	
Austin, TX.....	1.1096
Hays, TX.....	
Travis, TX.....	
Williamson, TX.....	
Bakersfield, CA.....	1.1972
Kern, CA.....	
Baltimore, MD.....	1.1069
Anne Arundel, MD.....	
Baltimore, MD.....	
Baltimore City, MD.....	
Carroll, MD.....	
Harford, MD.....	
Howard, MD.....	
Queen Annes, MD.....	
Bangor, ME.....	.9135
Penobscot, ME.....	
Baton Rouge, LA.....	.9754
Ascension, LA.....	
East Baton Rouge, LA.....	
Livingston, LA.....	
West Baton Rouge, LA.....	
Battle Creek, MI.....	1.0228
Calhoun, MI.....	
Beaumont-Port Arthur, TX.....	1.0009
Hardin, TX.....	
Jefferson, TX.....	
Orange, TX.....	
Beaver County, PA.....	1.0840
Beaver, PA.....	
Bellingham, WA.....	1.1388
Whatcom, WA.....	
Benton Harbor, MI.....	.8847
Berrien, MI.....	
Bergen-Passaic, NJ.....	1.0670
Bergen, NJ.....	
Passaic, NJ.....	
Billings, MT.....	1.0152
Yellowstone, MT.....	
Biloxi-Gulfport, MS.....	.8428

Urban area (constituent counties or county equivalents)	Wage index
Hancock, MS.....	
Harrison, MS.....	
Binghamton, NY.....	.9489
Broome, NY.....	
Tioga, NY.....	
Birmingham, AL.....	.9594
Blount, AL.....	
Jefferson, AL.....	
Saint Clair, AL.....	
Shelby, AL.....	
Walker, AL.....	
Bismarck, ND.....	.9871
Burleigh, ND.....	
Morton, ND.....	
Bloomington, IN.....	.9828
Monroe, IN.....	
Bloomington-Normal, IL.....	.9773
McLean, IL.....	
Boise City, ID.....	1.0508
Ada, ID.....	
Boston-Lawrence-Salem-Lowell-Brockton, MA.....	1.1485
Essex, MA.....	
Middlesex, MA.....	
Norfolk, MA.....	
Plymouth, MA.....	
Suffolk, MA.....	
Boulder-Longmont, CO.....	1.1244
Boulder, CO.....	
Bradenton, FL.....	.9129
Manatee, FL.....	
Brazoria, TX.....	.8679
Brazoria, TX.....	
Bremerton, WA.....	.9742
Kitsap, WA.....	
Bridgeport-Stamford-Norwalk-Danbury, CT.....	1.1760
Fairfield, CT.....	
Brownsville-Harlingen, TX.....	.8912
Cameron, TX.....	
Bryan-College Station, TX.....	.9500
Brazos, TX.....	
Buffalo, NY.....	1.0474
Erie, NY.....	
Burlington, NC.....	.7868
Alamance, NC.....	
Burlington, VT.....	1.0058
Chittenden, VT.....	
Grand Isle, VT.....	
Canton, OH.....	1.0007
Carroll, OH.....	
Stark, OH.....	
Casper, WY.....	1.0984
Natrona, WY.....	
Cedar Rapids, IA.....	1.0101
Linn, IA.....	
Champaign-Urbana-Rantoul, IL.....	.9893
Champaign, IL.....	
Charleston, SC.....	.8847
Berkeley, SC.....	
Charleston, SC.....	
Dorchester, SC.....	
Charleston, WV.....	1.0406
Kanawha, WV.....	
Putnam, WV.....	
Charlotte-Gastonia-Rock Hill, NC-SC.....	.8926
Cabarrus, NC.....	
Gaston, NC.....	

WAGE INDEX FOR URBAN AREAS— Continued		WAGE INDEX FOR URBAN AREAS— Continued		WAGE INDEX FOR URBAN AREAS— Continued	
Urban area (constituent counties or county equivalents)	Wage index	Urban area (constituent counties or county equivalents)	Wage index	Urban area (constituent counties or county equivalents)	Wage index
Lincoln, NC		Dallas, TX		Clay, MN	
Mecklenburg, NC		Denton, TX		Cass, ND	
Rowan, NC		Ellis, TX		Fayetteville, NC.....	.8270
Union, NC		Kaufman, TX		Cumberland, NC	
York, SC		Rockwall, TX		Fayetteville-Springdale, AR.....	.8020
Charlottesville, VA.....	.9278	Danville, VA.....	.8028	Washington, AR	
Albermarle, VA		Danville City, VA		FLint, MI.....	1.2016
Charlottesville City, VA		Pittsylvania, VA		Genesee, MI	
Fluvanna, VA		Davenport-Rock Island-Moline, IA-IL.....	1.0583	Florence, AL.....	.7832
Greene, VA		Scott, IA		Colbert, AL	
Chattanooga, TN-GA.....	.9968	Henry, IL		Lauderdale, AL	
Catoosa, GA		Rock Island, IL		Florence, SC.....	.7631
Dade, GA		Dayton-Springfield, OH.....	1.0860	Florence, SC	
Walker, GA		Clark, OH		Fort Collins-Loveland, CO.....	1.0768
Hamilton, TN		Greene, OH		Larimer, CO	
Marion, TN		Miami, OH		Fort Lauderdale-Hollywood-	
Sequatchie, TN		Montgomery, OH		Pompano Beach, FL.....	1.1168
Cheyenne, WY.....	.9631	Daytona Beach, FL.....	.9073	Broward, FL	
Laramie, WY		Volusia, FL		Fort Myers-Cape Coral, FL.....	.9464
Chicago, IL.....	1.2299	Decatur, IL.....	.9523	Lee, FL	
Cook, IL		Macon, IL		Fort Pierce, FL.....	1.0141
Du Page, IL		Denver, CO.....	1.2772	Martin, FL	
McHenry, IL		Adams, CO		St Lucie, FL	
Chico, CA.....	1.2373	Arapahoe, CO		Fort Smith, AR-OK.....	.9176
Butte, CA		Denver, CO		Crawford, AR	
Cincinnati, OH-KY-IN.....	1.0970	Douglas, CO		Sebastian, AR	
Dearborn, IN		Jefferson, CO		Sequoyah, OK	
Boone, KY		Des Moines, IA.....	1.0480	Fort Walton Beach, FL.....	.8688
Campbell, KY		Dallas, IA		Okaloosa, FL	
Kenton, KY		Polk, IA		Fort Wayne, IN.....	.9499
Clermont, OH		Warren, IA		Allen, IN	
Hamilton, OH		Detroit, MI.....	1.1640	De Kalb, IN	
Warren, OH		Lapeer, MI		Whitley, IN	
Clarksville-Hopkinsville, TN-KY.....	.8124	Livingston, MI		Fort Worth-Arlington, TX.....	.9926
Christian, KY		Macomb, MI		Johnson, TX	
Montgomery, TN		Monroe, MI		Parker, TX	
Cleveland, OH.....	1.1481	Oakland, MI		Tarrant, TX	
Cuyahoga, OH		Saint Clair, MI		Fresno, CA.....	1.1407
Geauga, OH		Wayne, MI		Fresno, CA	
Lake, OH		Dothan, AL.....	.8396	Gadsden, AL.....	.8713
Medina, OH		Dale, AL		Etowah, AL	
Colorado Springs, CO.....	1.0363	Houston, AL		Gainesville, FL.....	.9572
El Paso, CO		Dubuque, IA.....	1.0514	Alachua, FL	
Columbia, MO.....	1.0942	Dubuque, IA		Bradford, FL	
Boone, MO		Duluth, MN-WI.....	.9858	Galveston-Texas City, TX.....	1.1329
Columbia, SC.....	.9102	St. Louis, MN		Galveston, TX	
Lexington, SC		Douglas, WI		Gary-Hammond, IN.....	1.0899
Richland, SC		Eau Claire, WI.....	.9429	Lake, IN	
Columbus, GA-AL.....	.7872	Chippewa, WI		Porter, IN	
Russell, AL		Eau Claire, WI		Glens Falls, NY.....	.9538
Chattahoochee, GA		El Paso, TX.....	.9369	Warren, NY	
Muscogee, GA		El Paso, TX		Washington, NY	
Columbus, OH.....	.9614	Elkhart-Goshen, IN.....	.9581	Grand Forks, ND.....	.9800
Delaware, OH		Elkhart, IN		Grand Forks, ND	
Fairfield, OH		Elmira, NY.....	.9670	Grand Rapids, MI.....	1.0586
Franklin, OH		Chemung, NY		Kent, MI	
Licking, OH		Enid, OK.....	.9557	Ottawa, MI	
Madison, OH		Garfield, OK		Great Falls, MT.....	1.0644
Pickaway, OH		Erie, PA.....	.9919	Cascade, MT	
Union, OH		Erie, PA		Greeley, CO.....	1.0685
Corpus Christi, TX.....	.9827	Eugene-Springfield, OR.....	1.1082	Weld, CO	
Nueces, TX		Lane, OR		Green Bay, WI.....	1.0252
San Patricio, TX		Evansville, IN-KY.....	1.0143	Brown, WI	
Cumberland, MD-WV.....	.8931	Posey, IN		Greensboro-Winston-Salem-High	
Allegeny, MD		Vanderburgh, IN		Point, NC.....	.9320
Mineral, WV		Warrick, IN		Davidson, NC	
Dallas, TX.....	1.0656	Henderson, KY		Davie, NC	
Collin, TX		Fargo-Moorhead, ND-MN.....	1.0567	Forsyth, NC	

WAGE INDEX FOR URBAN AREAS— Continued		WAGE INDEX FOR URBAN AREAS— Continued		WAGE INDEX FOR URBAN AREAS— Continued	
Urban area (constituent counties or county equivalents)	Wage index	Urban area (constituent counties or county equivalents)	Wage index	Urban area (constituent counties or county equivalents)	Wage index
Guilford, NC		Duval, FL		Calcasieu, LA	
Randolph, NC		Nassau, FL		Lake County, IL.....	1.1552
Stokes, NC		St. Johns, FL		Lake, IL	
Yadkin, NC		Jacksonville, NC.....	.7908	Lakeland-Winter Haven, FL.....	.8787
Greenville-Spartanburg, SC.....	.9064	Onslow, NC		Polk, FL	
Greenville, SC		Janesville-Beloit, WI.....	.9353	Lancaster, PA.....	1.0320
Pickens, SC		Rock, WI		Lancaster, PA	
Spartanburg, SC		Jersey City, NJ.....	1.0529	Lansing-East Lansing, MI.....	1.0692
Hagerstown, MD.....	.9516	Hudson, NJ		Clinton, MI	
Washington, MD				Eaton, MI	
Hamilton-Middletown, OH.....	1.0140	Johnson City-Kingsport-Bristol, TN- VA.....	.8555	Ingham, MI	
Butler, OH		Carter, TN		Laredo, TX.....	.8104
Harrisburg-Lebanon-Carlisle, PA.....	.9796	Hawkins, TN		Webb, TX	
Cumberland, PA		Sullivan, TN		Las Cruces, NM.....	.8703
Dauphin, PA		Unicoi, TN		Dona Ana, NM	
Lebanon, PA		Washington, TN		Las Vegas, NV.....	1.1173
Perry, PA		Bristol City, VA		Clark, NV	
Hartford-New Middletown-Britain- Bristol, CT.....	1.1379	Scott, VA		Lawrence, KS.....	1.0106
Hartford, CT		Washington, VA		Douglas, KS	
Litchfield, CT		Johnstown, PA.....	.9457	Lawton, OK.....	.9400
Middlesex, CT		Cambria, PA		Comanche, OK	
Tolland, CT		Somerset, PA		Lewiston-Auburn, ME.....	.9357
Hickory, NC.....	.8917	Joliet, IL	1.1172	Androscoggin, ME	
Alexander, NC		Grundy, IL		Lexington-Fayette, KY.....	.9802
Burke, NC		Will, IL		Bourbon, KY	
Catawba, NC		Joplin, MO.....	.9136	Clark, KY	
Honolulu, HI.....	1.1935	Jasper, MO		Fayette, KY	
Honolulu, HI		Newton, MO		Jessamine, KY	
Houma-Thibodaux, LA.....	.9162	Kalamazoo, MI.....	1.2252	Scott, KY	
Lafourche, LA		Kalamazoo, MI		Woodford, KY	
Terrebonne, LA		Kankakee, IL.....	.9441	Lima, OH.....	.9795
Houston, TX.....	1.0591	Kankakee, IL		Allen, OH	
Fort Bend, TX		Kansas City, KS-MO.....	1.0583	Auglaize, OH	
Harris, TX		Johnson, KS		Lincoln, NE.....	.9640
Liberty, TX		Leavenworth, KS		Lancaster, NE	
Montgomery, TX		Miami, KS		Little Rock-North Little Rock, AR.....	1.1055
Waller, TX		Wyandotte, KS		Faulker, AR	
Huntington-Ashland, WV-KY-OH.....	.9441	Cass, MO		Lonoke, AR	
Boyd, KY		Clay, MO		Pulaski, AR	
Carter, KY		Jackson, MO		Saline, AR	
Greenup, KY		Lafayette, MO		Longview-Marshall, TX.....	.8349
Lawrence, OH		Platte, MO		Gregg, TX	
Cabell, WV		Ray, MO		Harrison, TX	
Wayne, WV		Kenosha, WI.....	1.0796	Lorain-Elyria, OH.....	1.0205
Huntsville, AL.....	.8599	Kenosha, WI		Lorain, OH	
Madison, AL		Killeen-Temple, TX.....	.8785	Los Angeles-Long Beach, CA.....	1.3193
Indianapolis, IN.....	1.0517	Bell, TX		Los Angeles, CA	
Boone, IN		Coryell, TX		Louisville, KY-IN.....	1.0009
Hamilton, IN		Knoxville, TN.....	.8931	Clark, IN	
Hancock, IN		Anderson, TN		Floyd, IN	
Hendricks, IN		Blount, TN		Harrison, IN	
Johnson, IN		Grainger, TN		Bullitt, KY	
Marion, IN		Jefferson, TN		Jefferson, KY	
Morgan, IN		Knox, TN		Oldham, KY	
Shelby, IN		Sevier, TN		Shelby, KY	
Iowa City, IA.....	1.2990	Union, TN		Lubbock, TX.....	1.0055
Johnson, IA		Kokomo, IN.....	.9799	Lubbock, TX	
Jackson, MI.....	1.0132	Howard, IN		Lynchburg, VA.....	.9148
Jackson, MI		Tipton, IN		Amherst, VA	
Jackson, MS.....	.9279	LaCrosse, WI.....	1.0093	Campbell, VA	
Hinds, MS		LaCrosse, WI		Lynchburg City, VA	
Madison, MS		Lafayette, LA.....	1.0041	Macon-Warner Robins, GA.....	.9257
Rankin, MS		Lafayette, LA		Bibb, GA	
Jackson, TN.....	.7859	Lafayette, LA		Houston, GA	
Madison, TN		St. Martin, LA		Jones, GA	
Jacksonville, FL.....	.9412	Lafayette, IN.....	.9097	Peach, GA	
Clay, FL		Tippecanoe, IN		Madison, WI.....	1.0823
		Lake Charles, LA.....	.9964	Dane, WI	

WAGE INDEX FOR URBAN AREAS— Continued		WAGE INDEX FOR URBAN AREAS— Continued		WAGE INDEX FOR URBAN AREAS— Continued	
Urban area (constituent counties or county equivalents)	Wage index	Urban area (constituent counties or county equivalents)	Wage index	Urban area (constituent counties or county equivalents)	Wage index
Manchester-Nashua, NH	.9508	Williamson, TN		Douglas, NE	
Hillsboro, NH		Wilson, TN		Sarpy, NE	
Merrimack, NH		Nassau-Suffolk, NY	1.3278	Washington, NE	
Mansfield, OH	.9847	Nassau, NY		Orange County, NY	.9232
Richland, OH		Suffolk, NY		Orange, NY	
McAllen-Edinburg-Mission, TX	.8046	New Bedford-Fall River-Attleboro, MA	.9725	Orlando, FL	1.0115
Hidalgo, TX		Bristol, MA		Orange, FL	
Medford, OR	1.0281	New Haven-West Haven-Waterbury-Meriden, CT	1.1194	Osceola, FL	
Jackson, OR		New Haven, CT		Seminole, FL	
Melbourne-Titusville, FL	.9310	New London-Norwich, CT	1.1023	Owensboro, KY	.8184
Brevard, FL		New London, CT		Daviess, KY	
Memphis, TN-AR-MS	1.0418	New Orleans, LA	.9277	Oxnard-Ventura, CA	1.2807
Crittenden, AR		Jefferson, LA		Ventura, CA	
De Soto, MS		Orleans, LA		Panama City, FL	.8293
Shelby, TN		St. Bernard, LA		Bay, FL	
Tipton, TN		St. Charles, LA		Parkersburg-Marietta, WV-OH	.9055
Miami-Hialeah, FL	1.0625	St. John The Baptist, LA		Washington, OH	
Dade, FL		St. Tammany, LA		Wood, WV	
Middlesex-Somerset-Hunterdon, NJ	1.0274	New York, NY	1.3710	Pascagoula, MS	.9608
Hunterdon, NJ		Bronx, NY		Jackson, MS	
Middlesex, NJ		Kings, NY		Pensacola, FL	.8679
Somerset, NJ		New York City, NY		Escambia, FL	
Midland, TX	1.1223	Putnam, NY		Santa Rosa, FL	
Midland, TX		Queens, NY		Peoria, IL	1.0508
Milwaukee, WI	1.1329	Richmond, NY		Peoria, IL	
Milwaukee, WI		Rockland, NY		Tazewell, IL	
Ozaukee, WI		Westchester, NY		Woodford, IL	
Washington, WI		Newark, NJ	1.1321	Philadelphia, PA-NJ	1.1789
Waukesha, WI		Essex, NJ		Burlington, NJ	
Minneapolis-St. Paul, MN-WI	1.1687	Morris, NJ		Camden, NJ	
Anoka, MN		Sussex, NJ		Gloucester, NJ	
Carver, MN		Union, NJ		Bucks, PA	
Chisago, MN		Niagara Falls, NY	.8894	Chester, PA	
Dakota, MN		Niagara, NY		Delaware, PA	
Hennepin, MN		Norfolk-Virginia Beach-Newport News, VA	.9622	Montgomery, PA	
Isanti, MN		Chesapeake City, VA		Philadelphia, PA	
Ramsey, MN		Gloucester, VA		Phoenix, AZ	1.0723
Scott, MN		Hampton City, VA		Maricopa, AZ	
Washington, MN		James City Co., VA		Pine Bluff, AR	.7952
Wright, MN		Newport News City, VA		Jefferson, AR	
St. Croix, WI		Norfolk City, VA		Pittsburgh, PA	1.0932
Mobile, AL	.8863	Poquoson, VA		Allegheny, PA	
Baldwin, AL		Portsmouth City, VA		Fayette, PA	
Mobile, AL		Suffolk City, VA		Washington, PA	
Modesto, CA	1.2015	Virginia Beach City, VA		Westmoreland, PA	
Stanislaus, CA		Williamsburg City, VA		Pittsfield, MA	1.0172
Monmouth-Ocean, NJ	.9853	York, VA		Berkshire, MA	
Monmouth, NJ		Oakland, CA	1.4793	Portland, ME	.9808
Ocean, NJ		Alameda, CA		Cumberland, ME	
Monroe, LA	.9275	Contra Costa, CA		Sagadahoc, ME	
Ouachita, LA		Ocala, FL	.8672	York, ME	
Montgomery, AL	.8812	Marion, FL		Portland, OR	1.1987
Autauga, AL		Odessa, TX	.9550	Clackamas, OR	
Elmore, AL		Ector, TX		Multnomah, OR	
Montgomery, AL		Oklahoma City, OK	1.0851	Washington, OR	
Muncie, IN	.9993	Canadian, OK		Yamhill, OR	
Delaware, IN		Cleveland, OK		Portsmouth-Dover-Rochester, NH	.9305
Muskegon, MI	.9840	Logan, OK		Rockingham, NH	
Muskegon, MI		McClain, OK		Strafford, NH	
Naples, FL	1.0373	Oklahoma, OK		Poughkeepsie, NY	1.0174
Collier, FL		Pottawatomie, OK		Dutchess, NY	
Nashville, TN	.9346	Olympia, WA	1.0709	Providence-Pawtucket-Woonsocket, RI	1.0426
Cheatham, TN		Thurston, WA		Bristol, RI	
Davidson, TN		Omaha, NE-IA	1.0433	Kent, RI	
Dickson, TN		Pottawattamie, IA		Newport, RI	
Robertson, TN				Providence, RI	
Ruthford, TN				Statewide, RI	
Sumner, TN					

WAGE INDEX FOR URBAN AREAS— Continued		WAGE INDEX FOR URBAN AREAS— Continued		WAGE INDEX FOR URBAN AREAS— Continued	
Urban area (constituent counties or county equivalents)	Wage index	Urban area (constituent counties or county equivalents)	Wage index	Urban area (constituent counties or county equivalents)	Wage index
Washington, RI		Stearns, MN		Bossier, LA	
Provo-Orem, UT	.9786	St. Joseph, MO	.9418	Caddo, LA	
Utah, UT		Buchanan, MO		Sioux City, IA-NE	.9989
Pueblo, CO	1.1129	St. Louis, MO-IL	1.0748	Woodbury, IA	
Pueblo, CO		Clinton, IL		Dakota, NE	
Racine, WI	.9930	Jersey, IL		Sioux Falls, SD	1.0137
Racine, WI		Madison, IL		Minnehaha, SD	
Raleigh-Durham, NC	.9650	Monroe, IL		South Bend-Mishawaka, IN	1.0014
Durham, NC		St. Clair, IL		St. Joseph, IN	
Franklin, NC		Franklin, MO		Spokane, WA	1.1475
Orange, NC		Jefferson, MO		Spokane, WA	
Wake, NC		St. Charles, MO		Springfield, IL	1.0587
Rapid City, SD	.9554	St. Louis, MO		Menard, IL	
Pennington, SD		St. Louis City, MO		Sangamon, IL	
Reading, PA	1.0174	Salem, OR	1.0892	Springfield, MO	.9792
Berks, PA		Marion, OR		Christian, MO	
Rtedding, CA	1.2306	Polk, OR		Greene, MO	
Shasta, CA		Salinas-Seaside-Monterey, CA	1.2480	Springfield, MA	.9988
Reno, NV	1.1753	Monterey, CA		Hampden, MA	
Washoe, NV		Salt Lake City-Ogden, UT	1.0279	Hampshire, MA	
Richland-Kennewick, WA	1.0182	Davis, UT		State College, PA	1.0694
Benton, WA		Salt Lake, UT		Centre, PA	
Franklin, WA		Weber, UT		Steubenville-Weirton, OH-WV	.9585
Richmond-Petersburg, VA	.9529	San Angelo, TX	.8656	Jefferson, OH	
Charles City Co., VA		Tom Green, TX		Brooke, WV	
Chesterfield, VA		San Antonio, TX	.8878	Hancock, WV	
Colonial Heights City, VA		Bexar, TX		Stockton, CA	1.2778
Dinwiddie, VA		Comal, TX		San Joaquin, CA	
Goochland, VA		Guadalupe, TX		Syracuse, NY	1.0389
Hanover, VA		San Diego, CA	1.3009	Madison, NY	
Henrico, VA		San Diego, CA		Onondaga, NY	
Hopewell City, VA		San Francisco, CA	1.6380	Oswego, NY	
New Kent, VA		Marin, CA		Tacoma, WA	1.0972
Petersburg City, VA		San Francisco, CA		Pierce, WA	
Powhatan, VA		San Mateo, CA		Tallahassee, FL	.9441
Prince George, VA		San Jose, CA	1.4698	Gadsden, FL	
Richmond City, VA		Santa Clara, CA		Leon, FL	
Riverside-San Bernardino, CA	1.2426	Santa Barbara-Santa Maria-Lompoc, CA	1.1749	Tampa-St. Petersburg- Clearwater, FL	.9759
Riverside, CA		Santa Barbara, CA		Hernando, FL	
San Bernardino, CA		Santa Cruz, CA	1.2343	Hillsborough, FL	
Roanoke, VA	.8932	Santa Cruz, CA		Pasco, FL	
Botetourt, VA		Santa Fe, NM	.9738	Pinellas, FL	
Roanoke, VA		Los Alamos, NM		Terre Haute, IN	.8395
Roanoke City, VA		Santa Fe, NM		Clay, IN	
Salem City, VA		Santa Rosa-Petaluma, CA	1.3017	Vigo, IN	
Rochester, MN	1.0210	Sonoma, CA		Texarkana-TX-Texarkana, AR	.8588
Olmsted, MN		Sarasota, FL	.9569	Miller, AR	
Rochester, NY	1.0152	Sarasota, FL		Bowie, TX	
Livingston, NY		Savannah, GA	.8853	Toledo, OH	1.2178
Monroe, NY		Chatham, GA		Fulton, OH	
Ontario, NY		Effingham, GA		Lucas, OH	
Orleans, NY		Scranton-Wilkes Barre, PA	.9910	Wood, OH	
Wayne, NY		Columbia, PA		Topeka, KS	1.0555
Rockford, IL	1.1272	Lackawanna, PA		Shawnee, KS	
Boone, IL		Luzerne, PA		Trenton, NJ	1.0242
Winnebago, IL		Monroe, PA		Mercer, NJ	
Sacramento, CA	1.2875	Wyoming, PA		Tucson, AZ	1.0017
Eldorado, CA		Seattle, WA	1.1495	Pima, AZ	
Placer, CA		King, WA		Tulsa, OK	1.0058
Sacramento, CA		Snohomish, WA		Creeks, OK	
Yolo, CA		Sharon, PA	.9687	Osage, OK	
Saginaw-Bay City-Midland, MI	1.0990	Mercer, PA		Rogers, OK	
Bay, MI		Sheboygan, WI	.9813	Tulsa, OK	
Midland, MI		Sheboygan, WI		Wagoner, OK	
Saginaw, MI		Sherman-Denison, TX	.8557	Tuscaloosa, AL	1.0099
St. Cloud, MN	.9945	Grayson, TX		Tuscaloosa, AL	
Benton, MN		Shreveport, LA	.9543	Tyler, TX	.9963
Sherburne, MN					

WAGE INDEX FOR URBAN AREAS—
ContinuedWAGE INDEX FOR URBAN AREAS—
Continued

Urban area (constituent counties or county equivalents)	Wage index
Smith, TX	
Utica-Rome, NY	.8667
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3300
Napa, CA	
Solano, CA	
Vancouver, WA	1.1574
Clark, WA	
Victoria, TX	.8145
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9858
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0566
Tulare, CA	
Waco, TX	.9051
McLennan, TX	
Washington, D.C.-MD-VA	1.1878
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	.9920
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.9800
Marathon, WI	
West Palm Beach-Boca Raton-Delary Beach, FL	.9900
Palm Beach, FL	
Wheeling, WV-OH	.9700
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.1506
Butler, KS	
Sedgwick, KS	
Wichita Falls, TX	.8712
Wichita, TX	
Williamsport, PA	.8983
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0511
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.9522
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	.9961
Worcester, MA	
Yakima, WA	1.0314
Yakima, WA	
York, PA	.9782
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.0404
Mahoning, OH	

Urban area (constituent counties or county equivalents)	Wage index
Trumbull, OH	
Yuba City, CA	1.0385
Sutter, CA	
Yuba, CA	

WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage index
Alabama	.7412
Alaska	1.4880
Arizona	.9255
Arkansas	.7647
California	1.1374
Colorado	.9258
Connecticut	1.0384
Delaware	.8582
Florida	.8751
Georgia	.7723
Hawaii	1.0084
Idaho	.9064
Illinois	.9726
Indiana	.8622
Iowa	.8656
Kansas	.8419
Kentucky	.7978
Louisiana	.8543
Maine	.8585
Maryland	.8710
Massachusetts	1.0516
Michigan	.9520
Minnesota	.8725
Mississippi	.7650
Missouri	.8265
Montana	.9087
Nebraska	.8250
Nevada	1.0721
New Hampshire	.9185
New Jersey ¹	
New Mexico	.9146
New York	.8766
North Carolina	.8071
North Dakota	.8995
Ohio	.9034
Oklahoma	.8401
Oregon	1.0704
Pennsylvania	.9359
Rhode Island ¹	
South Carolina	.7770
South Dakota	.8203
Tennessee	.7677
Texas	.8121
Utah	.9436
Vermont	.8824
Virginia	.8167
Washington	1.0199
West Virginia	.8752
Wisconsin	.8929
Wyoming	.9674

¹All counties within the State are classified urban.

VI. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to publish an initial regulatory impact analysis for proposed regulations that are likely to meet the criteria for a major rule. A major rule is one that would 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 governmental agencies, or any 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.

We estimate that changing the rate-setting methodology and revising composite rates would reduce payments for outpatient maintenance dialysis services by approximately \$105 million dollars in the first full fiscal year of implementation. This would significantly reduce gross revenues for ESRD dialysis facilities. Since the impact of this proposed notice would exceed the \$100 million threshold, it is a major rule under E.O. 12291, and an initial regulatory impact analysis is required.

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed notices unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all ESRD facilities to be small entities. The changes contained in this proposed notice would result in a significant economic impact on all ESRD facilities. Therefore, we are providing a regulatory flexibility analysis.

The discussion below, in combination with the other sections of this notice, constitutes a combined initial regulatory impact analysis and initial regulatory flexibility analysis meeting the requirements of E.O. 12291 and the RFA.

B. Affected Entities.

There are 1,380 ESRD facilities throughout the country providing outpatient maintenance dialysis services. These facilities are largely dependent on Federal government payments for their existence. Over 90 percent of all outpatients maintenance dialysis patients are Medicare beneficiaries. The Medicare program pays 80 percent of the composite

payment rate for outpatient dialysis for these patients. Additional Federal money is infused into the ESRD industry through the State Medicaid programs. Most of the State Medicaid programs pay the remaining 20 percent of the facility cost or charge not paid by Medicare for those patients who are Medicaid recipients.

C. Effects of These Revised Rates

When we published proposed and final regulations establishing the ESRD composite rate payments system, we stated that we expected the system to accomplish two major objectives which, though not without effects that may seem adverse to some parties, would be of sufficient benefit to offset greatly any costs that resulted. These objectives are (1) to encourage home dialysis to the greatest extent feasible for the ESRD patient population, and (2) to encourage economy and efficiency in furnishing dialysis services. These objectives are closely related, since we expect increasing home dialysis to contribute to cost reduction because it is a less expensive way to deliver treatment. As we stated in the May 11, 1983 final rule, facilities must comply with the health and safety requirements of 42 CFR Subpart U, and we expect those requirements to continue to prove satisfactory to ensure the adequacy of patient care. We also stated our expectation that tightening the rate of payment and increasing the incentives for efficiency would result in pressures on the ESRD manufacturers and suppliers of equipment and supplies to ESRD facilities to lower their prices as ESRD facilities economized and sought to lower their cost.

Some commenters on the proposed rule expressed concern that facility closures would leave them effectively unable to choose infacility dialysis because of increased travel time to the nearest facility. The continuing increase in facilities, even since the announcement of our proposed composite rates in November 1981, but particularly since the final rules took effect on August 1, 1983, confirms our belief that facilities are able to operate under the composite rate system. The

NUMBERS OF OUTPATIENT ESRD FACILITIES

Calendar year	Hospital dialysis providers	Independent dialysis providers	Total providers
Dec. 1978	623	275	989
Dec. 1979	630	329	959
Dec. 1980	636	405	1041

following chart shows recent growth in the number of facilities.

NUMBERS OF OUTPATIENT ESRD FACILITIES— Continued

Calendar year	Hospital dialysis providers	Independent dialysis providers	Total providers
Dec. 1981	657	486	1143
Dec. 1982	642	528	1170
Dec. 1983	620	627	1247
Dec. 1984	622	668	1290
Dec. 1985	632	748	1380

The great fears expressed by some facilities, physicians and patients in response to the initial proposal of the composite rate system have not materialized. In addition, the proportion of patients receiving dialysis at home has increased, particularly for independent facilities. Thus, our experience to date supports our earlier expectations.

We believe that setting revised rates on the basis of the most recent available audit data and a slightly revised methodology is the best way to continue to pursue those objectives at this time. These changes would have a significant effect on annual payments for routine dialysis, as demonstrated by the following:

ESTIMATED REDUCTIONS IN MEDICARE PAYMENTS TO OUTPATIENT ESRD FACILITIES (IN MILLIONS)¹

Fiscal year	Reduction in coinsurance	Medicare savings	Total reduction in payments
1986 (2 months)	\$5	\$20	\$20
1987	25	115	140
1988	30	120	150
1989	30	125	155
1990	30	130	160
1991	35	135	170

¹Due to rounding, addition may appear inexact. These estimates are rounded to the nearest \$5 million, and are based on an assumed effective date of August 1, 1986.

In addition, because most State Medicaid programs pay coinsurance for ESRD beneficiaries who meet their eligibility requirements, some Medicaid savings would result from this change.

We expect these reduced revenues would intensify the incentives for ESRD facilities to improve their economy and efficiency and to shift as many patients to home dialysis as is safe and supportable. Our audits demonstrate that quality services are being furnished at a cost below the proposed rates at efficient and economical facilities. Hence, despite the estimated reductions in Medicare payments, we believe that quality of care will not be reduced.

Further, if a facility demonstrates with convincing evidence that it will have an allowable cost per treatment higher than its prospective rate, and if these excess costs meet the criteria in § 405.439(g), a facility may receive an exception to that rate. The exception process provides greater accuracy of payments in unique situations in which additional costs can be justified.

D. Effect of New Wage Index

Adopting the new HCFA wage index would affect the level of payment for a given facility if there were a significant change in the index value for the area. Some facilities would have a significantly higher wage index, while the wage index of other facilities would be lower. This effect would interact with the proposed reduction in the composite rates. Some facilities would have the reduction of their composite rates ameliorated by increases in their wage index values. On the other hand, some facilities would experience a further reduction in their rate due to a reduced wage index. This reduction in base composite rates combined with reduction in wage index values may, in some cases, result in a substantial reduction in a facility's payment per treatment. However, although some facilities will be disadvantaged by changes to the wage index, we believe the results would be generally equitable.

Compared to the BLS wage index used in the May 11, 1983 final rule, the adoption of the HCFA gross wage index would result in increased wage index values for 122 MSAs and 10 State-wide rural areas, and decreased values for 123 MSAs and 13 rural areas. Areas outside the 50 States and the District of Columbia would not be affected, because rates for ESRD facilities in all those areas are now, and will continue to be, calculated using the lower-limit wage index value of .9, which we have set as the lowest index we would use in this rate calculation.

We project that the wage index values would decrease for 613 ESRD facilities (including both hospital-based and independent facilities), increase for 556 facilities, and remain unchanged for 211 facilities. The resulting decreases in payment would average about \$2.50 per treatment; increases would average about \$2.20 per treatment. We estimate that the corresponding annual aggregate payment reduction for facilities with decreased index values would be about \$10 million. The annual aggregate increase for facilities with increased

values would be about \$7.5 million; thus, the net effect of the new wage index versus the present BLS wage index on total annual payments to ESRD facilities would be approximately a \$2.5 million reduction.

E. Conclusion

We believe that the benefits of this proposed notice would outweigh the costs. Payments would more accurately reflect our experience, and result in a substantial cost savings to the Medicare program. Medicare beneficiaries would benefit from reduced coinsurance obligations. The revised rates would promote economic incentives and efficiencies and encourage additional appropriate dialysis in the home setting. Although the change in rate-setting methodology would result in a payment reduction, the proposed reduction based on the most recent available data, is reasonable and within our authority.

The proportion of patients receiving dialysis at home has increased, particularly for independent facilities. The cost of home dialysis has decreased. We expect these trends to continue. The fears expressed by some facilities, physicians and patients in response to the initial proposal of the composite rate system have not materialized as the number of ESRD facilities has continued to increase. We will continue to monitor the effects of composite rate reimbursement on beneficiaries' access to care and continued development of the ESRD industry.

VII. Collection of Information Requirements

These proposed changes would not impose information collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VIII. Response to Public Comments

Because of the large number of pieces of correspondence we normally receive on proposed documents, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period and, if we proceed with a final notice, we will respond to those comments in the preamble to that notice.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: March 5, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: April 2, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-10583 Filed 5-9-86; 9:20]

BILLING CODE 4120-01-M

National Institutes of Health

Biomedical Research Technology Review Committee; Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and the Health Research Extension Act of 1985, November 20, 1985 (Pub. L. 99-158, section 402(b)(6)), the Director, National Institutes of Health, announces the reestablishment of the Biomedical Research Technology Review Committee, formerly the Biotechnology Resources Review Committee, effective June 1, 1986, and the reestablishment, effective June 1, 1986, of the following committees:

Animal Resources Review Committee
Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke
Communicative Disorders Review Committee
General Clinical Research Centers Committee
General Research Support Review Committee
Neurological Disorders Program-Project Review A Committee
Neurological Disorders Program-Project Review B Committee

The duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: May 8, 1986.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 86-10860 Filed 5-12-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona; Intent to Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: Notice is hereby given in accordance with 40 CFR 1508.22 that the Safford District is starting the preparation of an EIS. The purpose of the EIS is to analyze the natural resource, social and economic effects of implementing a range of alternatives for various land uses on approximately 43,900 acres of public lands managed by the Bureau of Land Management in southeastern Arizona. The lands involved are located in Cochise County. Final acreages and boundaries will be determined at a later date.

SUPPLEMENTARY INFORMATION: Initial scoping was conducted by an interdisciplinary team from the District and at a series of public meetings in February 1986 and preliminary issues developed. Clarification of these issues and identification of additional ones will be sought from the public through letters, press releases, solicitations and public scoping meetings. The meetings are scheduled at the following locations:

Tuesday, June 10, 1986, Mesa

Community Center, 201 N. Center Street, Mesa, Arizona

Wednesday, June 11, 1986, Smugglers Inn, 6350 E. Speedway Blvd., Tucson, Arizona

Thursday, June 12, 1986, City Council Chambers, City Hall, 2400 Tacoma Ave., Sierra Vista, Arizona

All meetings will begin at 7:00 p.m. Notices of all public meetings will be distributed to local media at least two weeks prior to the meetings.

Preliminary issues identified by BLM District staff and at the earlier public meetings are as follows:

- Maintenance and enhancement of water quality and quantity.
- Maintenance and enhancement of riparian vegetation.
- Recreational use and development.
- Protection of cultural and paleontological resources.
- Use of the property for livestock grazing.
- Use of the property for sand and gravel extraction.
- Fire management of the property.
- Present and future utility corridors.
- Controlling soil erosion.
- Use of the agricultural lands.

A full range of reasonable alternatives will be addressed in the EIS. They include: resource protection (minimum development); resource utilization (maximum development); balanced use (moderate development); and no action (continue present management). An interdisciplinary team will evaluate the alternatives in the EIS.

The Draft EIS is scheduled for publication in November 1987. A notice

of availability will be published in the **Federal Register** and publicized through the media.

FOR FURTHER INFORMATION: All inquiries on the EIS should be directed to Jerrold Coolidge, EIS Team Leader, Bureau of Land Management, 425 E. 4th St., Safford, Arizona 85546, phone (602) 428-4040, (FTS) 762-6384.

Dated: May 5, 1986.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 86-10669 Filed 5-12-86; 8:45 am]

BILLING CODE 4310-32-M

Portions of the Yuma District Resource Management Plan and Environmental Impact Statement; Yuma District, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Public notice that the Arizona State director has approved, in a record of decision (ROD), portions of the resource management plan (RMP) for the Yuma District.

SUMMARY: With the exception of the Unique Natural Areas and Features sub-issue, the ROD has adopted the proposed plan that was presented in the final Environmental Impact Statement (EIS) for the Yuma District RMP.

The approved portions of the plan will be implemented and will guide future management on approximately 1,192,000 acres of Federal lands along the lower Colorado River in southwestern Arizona and southeastern California. Counties within the planning area include Yuma, La Paz, and Mohave in Arizona and Riverside, San Bernardino, and Imperial in California.

Approval of the portion of the proposed plan that addresses Unique Natural Areas and Features has been withheld pending resolution of a protest. Once the protest is resolved this portion of the proposed plan will be approved and documented in a supplement to this Record of Decision.

EFFECTIVE DATE: May 1, 1986.

Availability

Copies of the Record of Decision will be sent to all individuals, agencies, and groups that received copies of the final EIS for the Yuma District RMP. In addition, a limited number of copies of the Record of Decision will be available upon request from the Yuma District Office, 3150 Winsor Avenue, P.O. Box 5680, Yuma, Arizona 85364. Public reading copies may be reviewed at the following locations:

BLM, Arizona State Office, 3707 North Seventh Street, Phoenix, Arizona 85014, (602) 241-5504;

BLM, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, (602) 855-8017

Public Participation

The public was invited to participate in the RMP in issue identification and the development of planning criteria during a 90-day comment period allowed on the draft EIS and at public hearings held during the comment period. Five protests were received during the 30-day protest period allowed after publication of the final EIS. With the exception of the portion of one protest addressing the Unique Natural Areas and Features sub-issue, all of these protests have been resolved.

SUPPLEMENTARY INFORMATION: The approved portions of the RMP cover six public land management issues including: Wildlife habitat management, special management areas for protection of important cultural resources, grazing use of public lands, land ownership adjustments, location of rights-of-way for utility corridors and communication sites, and recreation use and management on public lands.

Six management alternatives for the issues were developed during the planning process and were analyzed in the EIS. The alternatives were "No Action" (or continued implementation of current Management Framework Plans), an alternative directed toward resource production, an alternative directed toward balanced use with an emphasis on resource production, an alternative directed toward balanced use with an emphasis on resource protection, an alternative emphasizing resource protection, and the preferred alternative. The preferred alternative was selected for the proposed plan in the final EIS and (with the exception of the Unique Natural Areas and Features sub-issue) is the plan approved by this ROD.

The approved portions of the preferred alternative present a cost-effective plan that best responds to the issues in a multiple use/sustained yield framework. The approved portions provide for a variety of resource uses and protect the environment through mitigation of impacts. After implementation, other site-specific mitigation may be required to address impacts from specific land use proposals.

Progress toward accomplishing goals and objectives in the approved portions of the RMP will be monitored. The approved portions of the plan will be,

maintained to keep them current, and may be amended or a new plan developed if management goals and objectives change.

Dated: May 5, 1986.

D. Dean Bibbes,

Arizona State Director Bureau of Land Management.

[FR Doc. 86-10662 Filed 5-12-86; 8:45 am]

BILLING CODE 4310-32-M

Realty Action, Exchange of Public and Private Lands in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action CA 18784.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 3S., R. 6E.,

Sec. 14: NW ¼, S ½.

T. 3S., R. 7E.,

Sec. 28: All south of Joshua Tree Nat'l Monument.

Sec. 34: All.

Containing approximately 1650 acres of public land.

The legal description and acreage of the above public lands may change following the publishing of a new survey plat. However, the exterior boundary locations of the subject lands will not change.

In exchange for these lands, the United States will acquire the following lands from The Nature Conservancy located within the following described area:

San Bernardino Meridian, California

T. 4S., R. 7E.,

Sec. 7: Lot 1 of NW ¼, N ½ of Lot 2 of NW ¼, S ½ of Lot 2 of NW ¼, NE ¼.

Containing 326.17 acres of private land.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-federal lands within the proposed 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for

the lizard. Other State and Federal agencies will acquire the remaining portions of the preserve. The public interest will be well served by completing this exchange.

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public lands laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

The exchange will be conducted on a value for value basis. Following an appraisal, full equalization of value will be achieved by acreage adjustments or by a payment to the United States by the Nature Conservancy of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All the oil and gas and geothermal steam resources shall be reserved to the United States, together with the right to prospect for and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

3. Those rights for transmission line purposes granted to Imperil Irrigation District, its successors or assigns, serial No. CA 12724, under the Act of October 21, 1976 (43 U.S.C. 1761).

FOR FURTHER INFORMATION CONTACT: John Sullivan, Indio Resource Area at (714) 351-6663. Information relating to this exchange, including the environmental assessment and land report, is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District Office, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: May 2, 1986.

Hugh W. Riecken,

Acting District Manager.

[FR Doc. 86-10664 Filed 5-12-86; 8:45 am]

BILLING CODE 4310-40-M

[ES 21195 and ES 21200, Ohio]

Proposed Reinstatements of Terminated Oil and Gas Leases; Ohio

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed reinstatements of terminated oil and gas leases.

SUMMARY:

1. Federal oil and gas leases ES 21195 and ES 21200 terminated automatically by operation of law on May 1, 1985 (30 U.S.C. 188).
2. Petitions for reinstatements of ES 21195 and ES 21200 were filed by Amoco Corporation (Lessee) under section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).
3. The lessee has met all the following requirements of reinstatement:
 - (a) \$1,000—Reimbursement of Department Administrative Cost.
 - (b) \$1,065—Back Rental Payments.
 - (c) \$257—Estimated Publication Cost.
4. The proposed reinstatements of the leases would be under the same terms and conditions of the original leases, except the rentals will be increased to \$5.00 per acre per year, and royalties increased to 16 $\frac{2}{3}$ percent beginning May 1, 1985.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles Johnson, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 274-0160.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 86-10594 Filed 5-12-86; 8:45 am]

BILLING CODE 4310-GJ-M

Minerals Management Service

Development Operations Coordination; CNG Producing Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that CNG Producing Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4460, Block 76, South Timbalier Area, offshore Louisiana. Proposed plans for

the above area provide for the development and production of hydrocarbons with support activities to be conducted from an offshore base located at Houma, Louisiana.

DATES: The subject DOCD was deemed submitted on April 30, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT:

Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 5, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-10663 Filed 5-12-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination; Texaco USA

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Texaco USA has submitted a DOCD describing the activities it proposes to conduct on leases OCS-G 6987 and 7989. Blocks 6 and 50, respectively, Green Canyon Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Louisa and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on April 30, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for the public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office House: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the

Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Services makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties become effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

May 5, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-10668 Filed 5-12-86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Consent Judgment in Action to Enjoin Violation of The Clean Water Act ("CWA"); Long Island Duck Farmers Cooperative, Inc.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent judgment in *United States v. Long Island Duck Farmers Cooperative, Inc.*, Civil Action No. CV-185-1427, was lodged with the United States District Court for the Eastern District of New York on April 21, 1986. The consent decree establishes a compliance program for the Eastport, Suffern County, New York facility owned and operated by Long Island Duck Farmers Cooperative, Inc., to bring the facility into compliance with the Clean Water Act ("CWA"), 33 U.S.C. 1251 *et seq.*, and its State Pollutant Discharge Elimination Permit ("N/SPDES") issued pursuant to Section 402 of the Act, 33 U.S.C. 1342 and required payment of a civil penalty in the amount of \$90,000.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. Long Island Duck Farmers Cooperative, Inc.*, D.J. Ref. No. 90-5-1-1-2339.

The consent decree may be examined at the Office of the United States Attorney, Eastern District of New York, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of 1.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Associate Attorney General,

[FR Doc. 86-10713 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Iowa and Steger-Heiderscheit

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on April 25, 1986 a proposed Consent Decree in *United States v. State of Iowa and Steger-Heiderscheit*, Civil Action No. C85-1008 was lodged with the United States District Court for the Northern District of Iowa. The proposed Consent Decree concerns violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR Part 61. The proposed Consent Decree requires defendants State of Iowa and Steger-Heiderscheit Construction to comply with the provisions of the asbestos NESHAP and to pay a civil penalty of \$26,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. State of Iowa and Steger-Heiderscheit Construction*, D.J. Ref. 90-5-2-1-757.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Iowa, Room 226, U.S. Post Office and Courthouse, 101 First Street, SE, Cedar Rapids, Iowa 52401 and at the Region VII, Office of the Environmental

Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC, 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-10714 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Proposed Consent Decree Pursuant to the Clean Water Act; Tom-Kat Mining Co.

In accordance with Department policy, 28 CFR 50.7, a notice is hereby given that on April 30, 1986, a proposed Consent Decree in *United States v. Tom-Kat Development, Inc., and Burton Carver dba Tom-Kat Mining Co.*, Civil Action No. A84-48 was lodged with the United States District Court for the District of Alaska.

The proposed Consent Decree requires the defendants to comply with section 301 of the Clean Water Act and to refrain from all discharges of pollutants without the authorization of a National Pollutant Discharge Elimination System (NPDES) permit. The decree also imposes stipulated penalties on the defendants for any failures on their part to either obtain appropriate NPDES permits or to comply with the terms of the NPDES permits when such failure of compliance is attributable to a failure of the defendants to install, operate, or maintain waste-water pollution control facilities. The decree also provides for the payment of a civil penalty by the defendants in the amount of \$12,500 to be paid upon entry of the decree. With the exception of penalty obligations, the decree terminates August 30, 1986.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Tom-Kat Development, Inc., and Burton Carver dba Tom-Kat Mining Company*, D.J. No. 90-5-1-1-2061.

The proposed Consent Decree may be examined at the office of the United States Attorney, United States Courthouse, 101 12th Avenue, Room 310, Fairbanks, Alaska; the Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the case and D.J. Number and enclose a check in the amount of \$1.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-10715 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act in United States v. National Cement Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 2, 1986 a proposed Consent Decree in *United States v. National Cement Company, Inc.*, Civil Action No. CV-84-PT-2944M was lodged with the United States District Court for the Northern District of Alabama. The Complaint in this enforcement action was filed on November 24, 1984 against National Cement Company, Inc. ("National Cement") under Sections 111 and 113 of the Clean Air Act ("the Act"), 42 U.S.C. 7411 and 7413, seeking civil penalties and injunctive relief to abate excessive particulate emissions discharged by National Cement's Portland Cement kiln and clinker-cooler at its facility located in Ragland, Saint Clair County, Alabama. The complaint alleged violations of New Source Performance Standards applicable to kilns and clinker-coolers at Portland Cement Plants. 40 CFR 60.62(a)(2), (b)(1) and (b)(2). The proposed Consent Decree ("Decree") requires the defendant to undertake source performance testing on its kiln over a one (1) year period and to overcontrol particulate matter emissions at the clinker/cooler for three years in addition to payment of a \$50,000 civil penalty to the United States for past violations of the Act. Stipulated penalties are also provided in the event of future violations of schedules or for

failure to comply with requirements of the decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States v. National Cement Company, Inc.*, D.J. Ref. 90-5-2-1-760.

The proposed Consent Decree may be examined at the office of the United States Attorney, 200 Federal Courthouse, 1800 Fifth Avenue, Birmingham, Alabama, and at the United States Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of \$3.20 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-10667 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; Hoffmann-LaRoche, Inc.

By Notice dated December 5, 1985, and published in the *Federal Register* on December 10, 1985 (50 FR 50354), Hoffmann-La Roche, Inc., 350 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370) (for manufacturing diagnostic products for non-human consumption to detect THC in urine)	I
Alphaprodine (9010)	II
Levorphanol (9220)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant

Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 1, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-10719 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-09-M

Donald F. Hoops, D.D.S.; Denial of Application

On December 27, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Donald F. Hoops, D.D.S., 2205 Paradise Road, Las Vegas, Nevada 89104-2581. The Order to Show Cause sought to deny the application for DEA registration executed by Dr. Hoops on June 25, 1985. The statutory predicate for the Order to Show Cause was, as to Schedule II substances, that Dr. Hoops was not authorized by the State of Nevada to prescribe, administer, dispense or otherwise handle controlled substances in Schedule II; and as to Schedule III, IV, and V controlled substances that Dr. Hoops' registration with the Drug Enforcement Administration would be inconsistent with the public interest.

The Order to Show Cause was sent registered mail, return receipt requested, to the address at which Dr. Hoops applied for registration. The Order to Show Cause was returned unclaimed. On February 24, 1986, a Special Agent of the Drug Enforcement Administration served Dr. Hoops with the Order to Show Cause dated December 27, 1985 at his office at 2205 Paradise Road, Las Vegas, Nevada. Dr. Hoops has not responded to the Order to Show Cause. The Administrator therefore finds that Donald F. Hoops, D.D.S. has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and enters this final order on the record as it appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that in June 1982, Donald F. Hoops, D.D.S. entered into a stipulated settlement with the Nevada State Board of Dental Examiners in which he agreed to surrender his Class II dispensing license to the appropriate Nevada agency, and not to dispense Class II narcotics to any person. On October 5, 1982, Donald F. Hoops, D.D.S. surrendered the Schedule II portion of his DEA Certificate of Registration AH5812258 to agents of the

Nevada Division of Investigation. DEA Certificate of Registration AH5812258 was subsequently retired from DEA files on May 31, 1983 for failure to renew. Dr. Hoops is currently licensed by the Nevada State Board of Pharmacy to handle only Schedule III, IV, and V controlled substances. He is, therefore, not authorized by the State of Nevada to handle Schedule II controlled substances. The Administrator finds, consistent with prior holdings, that a practitioner cannot be issued a DEA Certificate of Registration when he is not authorized to handle controlled substances in the jurisdiction in which he is applying for such registration. See *Emerson Emory, M.D.*, Docket No. 85-46, 51 FR 9543 (1986), *Marshall S. Tuck, M.D.*, Docket No. 80-28, 45 FR 85845 (1980).

The Administrator further finds that Dr. Hoops entered into a stipulated settlement with the Nevada Board of Dental Examiners in June 1982 as the result of an investigation which revealed that he was prescribing the Schedule II narcotic Percodan for individuals who were not patients, and for no legitimate medical purpose. As a result of this settlement he surrendered the Schedule II portion of his DEA Certification of Registration on October 5, 1982. On Dr. Hoops' application for registration dated June 25, 1985, he answered the question, "Has the applicant ever been convicted of a felony in connection with controlled substances under State or Federal law, or ever surrendered or had a CSA registration revoked, suspended or denied?" by checking the box marked "No". The Administrator finds that by stating that he had never surrendered a CSA registration, and failing to note that he had voluntarily surrendered his Schedule II and Schedule IIN registration on October 5, 1982, Dr. Hoops materially falsified his application for a DEA Certificate of Registration.

The investigative file also indicates that although Dr. Hoops' DEA registration was retired from DEA files on May 31, 1983, due to delinquency, Dr. Hoops continued to write prescriptions without a valid DEA registration. On June 24, 1985, Dr. Hoops wrote a prescription for 12 Tylenol with Codeine #3 tablets, although he did not possess a current DEA Certificate of Registration. On August 8, 1985, Dr. Hoops attempted to obtain Darvon tablets from a White Cross Drug Store by writing a prescription for himself. When the pharmacist on duty requested that Dr. Hoops write his DEA registration number on the prescription, Dr. Hoops proceeded to destroy the prescription. Clearly, on at least two occasions, Dr.

Hoops wrote prescriptions for controlled substances even though he did not possess a current DEA Certificate of Registration, and consequently, was not authorized to administer, dispense or prescribe any controlled substances. The Administrator finds that such activity creates a danger to the public health and welfare of the community.

In addition, even while Dr. Hoops was duly registered to administer, dispense and prescribe controlled substances, the investigative record reveals that he prescribed Percodan to individuals for other than legitimate purposes. An investigation conducted by the Nevada Division of Investigations and Narcotics showed that between January 2, 1981 and October 8, 1981, Dr. Hoops wrote at least twenty-five prescriptions for a total of 392 dosage units of Percodan for various alleged "patients." Yet, when Dr. Hoops was questioned about such prescriptions, he could not provide the investigators with any dental records to substantiate the dental necessity of his Percodan prescribing activities. Based on the investigative record, the Administrator concludes that Dr. Hoops prescribed Percodan on numerous occasions without a legitimate medical purpose.

After fully reviewing the investigative record, the Administrator concludes that based on the fact that Dr. Hoops is not authorized to prescribe, administer, dispense or otherwise handle Schedule II controlled substances in the State of Nevada, and that he materially falsified his application for a DEA Certificate of Registration, there is a lawful basis for denying Dr. Hoops' application for a Certificate of Registration. In addition, since Dr. Hoops continued to prescribe controlled substances long after he was no longer authorized to do so, and even when he was authorized to handle controlled substances, he repeatedly abused that privilege by prescribing Percodan on numerous occasions to alleged "patients" for no legitimate medical purpose, the Administrator concludes that approving Dr. Hoops' application for registration would be wholly inconsistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) orders that the application for a DEA Certificate of Registration, executed by Donald F. Hoops, D.D.S. on June 25, 1985, and any other outstanding applications for DEA registration executed by Dr. Hoops, be and are hereby denied.

This order is effective May 13, 1986.

Dated: May 6, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-10720 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-42]

Albert Lepis, M.D.; Partial Revocation of Registration

On July 30, 1985, the Assistant Deputy Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Albert Lepis, M.D. (Respondent), 39 Bentley Avenue, Jersey City, New Jersey 07304. The Order to Show Cause sought to revoke DEA Certificate of Registration AL0661872, previously issued to Respondent. The statutory predicate for the Order to Show Cause was the inconsistency of Respondent's continued registration with the public interest under 21 U.S.C. 823(f).

Respondent, proceeding through counsel, requested a hearing on the issue raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held before Judge Young on December 18, 1985, in Washington, DC. Judge Young issued his opinion and recommended ruling on March 11, 1986, and transmitted the record to the Administrator on April 7, 1986. Neither side filed exceptions. The Administrator hereby enters his final order in this matter based on the record developed before the Administrative Law Judge.

The Administrator finds that Respondent's prescribing practices first came to the attention of the DEA Diversion Group in Newark in late 1984, when a Diversion Investigator was inspecting the Schedule II prescriptions on file in several pharmacies in northern New Jersey. The Investigator discovered over 100 prescription for Dilaudid (hydromorphone), a Schedule II narcotic, written by Respondent between January 3, 1984 and December 12, 1984, for one Leo Palier. Each prescription was for 100 Dilaudid 4 mg. Leo Palier was known to the Investigator as a drug addict who had been in contact with DEA during the investigation of a prescription forgery ring in New York City in 1980.

The Administrator further finds that Palier, in the company of one Dennis Wilson, visited Respondent in April, 1983. Wilson posed as the grandson of Palier. Palier was ill at the time that he visited Respondent. He was diagnosed by Respondent as suffering from

arthritis, an irregular heartbeat, and possible cancer of the prostate. Respondent also determined that Palier was in pain. Respondent prescribed Dilaudid for Leo Palier. In July, 1983, Respondent referred Palier to a urologist for examination. This specialist concluded that Palier, was, in fact, suffering from cancer of the prostate and recommended the prescription of opiates for the pain. Respondent continued to treat Palier and prescribe Dilaudid for him. Palier and Wilson visited Respondent every two weeks until Respondent himself was hospitalized in November, 1983.

Respondent returned to the practice of medicine in December, 1983, at which time Wilson returned to Respondent's office alone. Wilson told Respondent that his "grandfather" was confined to bed and could not come to Respondent's office. Wilson requested a Dilaudid prescription for Respondent, which Respondent gave him. Wilson continued to visit Respondent through 1984 and obtain prescriptions for Dilaudid for his "grandfather".

Leo Palier died on November 26, 1983. Respondent did not know this, but continued to prescribe Dilaudid for Palier and give the prescriptions to Wilson. Dr. Lepis kept no record of the amounts of Dilaudid he prescribed or the dates on which he prescribed it. During the DEA investigation, one pharmacist said that he had telephoned Respondent four times about the Dilaudid prescriptions he was writing for Palier, since he had not seen Palier for some time and did not know if Palier was alive. Each time, Respondent assured him that Palier was still alive and that the prescriptions were valid, since Palier was very ill and needed the medication. Other pharmacists also called Respondent about these prescriptions, and Respondent told them the same thing.

The Administrator finds further that Wilson was arrested on December 21, 1984, for his role in a prescription fraud ring. Wilson pled guilty to a charge in Federal court and cooperated with DEA Agents by providing information concerning his illegal activities. Palier and Wilson were not related, but were friends and drug addicts. Wilson would pose as the nephew or grandson of Palier and select physicians to visit with Palier. These were older physicians with practices in declining neighborhoods, whom Wilson perceived as more compassionate and more likely to welcome a new patient.

DEA Diversion Investigators interviewed Respondent in January, 1985. Dr. Lepis learned of Palier's death during this interview. When asked when

he last saw Palier, Respondent stated about one year ago. Respondent told the Investigators that he was writing four prescriptions for 100 Dilaudid every two weeks, since Palier was taking 25 dosage units of Dilaudid per day. The Administrator finds that the relevant New Jersey regulation governing the prescribing and dispensing of Schedule II controlled substances limits the prescription of dispensing to 120 dosage units or a 30-day supply, whichever is less.

The Administrator further finds that Respondent is an elderly physician who was first licensed to practice medicine in 1934. In recent years, his practice has dwindled. The Administrator finds no evidence in the record that Dr. Lepis is a "script doctor" or that he abused his DEA registration prior to the Palier prescriptions.

Since this action is brought under 21 U.S.C. 823(f), the Administrator must consider the five factors set out in that section to determine whether the continued registration of Respondent is consistent with the public interest. The two factors relevant in this matter are Respondent's experience in dispensing, or conducting research with respect to controlled substances, and his compliance with applicable state, federal or local laws relating to controlled substances.

The experience of Respondent in dispensing Schedule II controlled substances is unacceptably negligent and irresponsible. This negligence and irresponsibility is amply demonstrated. Respondent failed to keep any kind of records showing the amounts and dates of Dilaudid he prescribed for Leo Palier. Respondent never paid a house call on Palier, and gave prescriptions for large quantities of a most heavily-abused narcotic to Palier's "grandson" for a year without actually seeing the patient. While the Dilaudid was medically justified when Palier first saw Respondent, under no circumstances can it be said that there was a patient-physician relationship between Respondent and Palier when Wilson simply picked up the prescriptions, even had Palier not died in December, 1983. Respondent should have also been alerted by the calls from the pharmacists who had not seen Palier for some time.

Respondent's compliance with applicable laws relating to controlling substances also indicates that he should not be registered with DEA in Schedule II. Dr. Lepis prescribed 400 dosage units at a time for Palier, much more often than every two weeks. The relevant New Jersey regulation permits a

physician to prescribe at any one time, no more than 120 dosage units or a 30-day supply of a Schedule II controlled substance, whichever is less. Respondent prescribed well in excess of the lawful limit. A physician, simply because he is a physician, cannot ignore or flout the law in such a manner.

In evaluating these factors, the Administrator also finds that Respondent has had no problem with controlled substances, except for the Palier affair. Respondent has a practice of elderly patients who need controlled substances. In order for Respondent to continue his practice, he will need to retain registration in Schedules III through V. The public interest will be served by the revocation of Respondent's registration in Schedule II.

21 U.S.C. 824(a)(4) provides that a registration may be revoked upon a finding that the registrant has committed such acts as would render his registration inconsistent with the public interest, as determined under 21 U.S.C. 823(f). Accordingly, there is a lawful basis for revoking all, or some portions of, Respondent's registration.

Having examined the facts in this case, under the powers given the Attorney General in 21 U.S.C. 823 and 824, and delegated to the Administrator of the Drug Enforcement Administration in 21 U.S.C. 871 and 28 CFR 0.100 *et seq.*, the Administrator hereby revokes the Schedule II registration of AL0661872, previously issued to Albert Lepis, M.D., said revocation effective June 12, 1986.

Dated: May 7, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-10721 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-09-M

Paul Stepak, M.D.; Revocation of Registration

On March 27, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Paul Stepak, M.D. (Respondent), of Children's Hospital San Francisco, 3700 California Street, San Francisco, California 94118, and 4736 California Street, San Francisco, California 94118. The Order to Show Cause sought to revoke DEA Certificate of Registration AS2286537 and to deny any pending applications for registration, for reason that Respondent's continued registration with the Drug Enforcement Administration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f). The Order to Show Cause

recited, as evidence that Respondent's registration is inconsistent with the public interest, his indictment on or about August 23, 1985, by a grand jury sitting in the Northern District of California, of one count of conspiracy to distribute LSD, a Schedule I controlled substance, in violation of 21 U.S.C. 846; four counts of distribution of LSD, in violation of 21 U.S.C. 841(a)(1); and four counts of aiding and abetting the distribution of LSD, in violation of 18 U.S.C. 2. The Order to Show Cause also recited, as evidence that the registration should be revoked, Respondent's plea of guilty on March 17, 1986, to one count of distribution of controlled substances.

Respondent, proceeding *pro se*, replied to the Order to Show Cause in a letter dated April 2, 1986. The Administrator finds that Respondent waived his opportunity for a hearing under 21 CFR 1301.54(a), and that the letter constitutes a written statement regarding Respondent's position on the matters of fact and law involved, 21 CFR 1301.54(c).

Since the Order to Show Cause seeks the revocation of Respondent's registration based on its inconsistency with the public interest, the Administrator must consider the factors enunciated in 21 U.S.C. 823(f) in deciding whether to revoke this registration. The Administrator finds that four of the factors in section 823(f) are relevant for consideration in this matter. They are: Respondent's experience in dispensing or conducting research with regard to controlled substances; Respondent's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances; Respondent's compliance with applicable state, federal or local laws relating to controlled substances; and such other conduct which may threaten the public health and safety. The Administrator shall consider each factor in turn.

In his letter of April 2, 1986, Respondent admits that he was charged "with multiple offences (sic) and "submitted a guilty plea to one count of distribution of controlled substances". He also states in that letter that he never misused his DEA registration or acted improperly in prescribing controlled substances. The Administrator finds no evidence to the contrary. However, the overwhelming evidence in this case leads to the inescapable conclusion that this registration should be revoked.

Respondent pled guilty in the United States District Court for the Northern District of California on March 17, 1986, to one count of distribution of controlled substances. The Administrator has

consistently construed a plea of guilty or entry of a verdict as a "conviction" under 21 U.S.C. 824(a)(2). Therefore, the Administrator shall consider this plea to be a "conviction" under 21 U.S.C. 823(f). See *Faunce Drug Store*, Dk. No. 82-3, 47 FR 30122 (1982); *United States v. Rosenstengal*, 323 F.Supp. 499 (E.D.Mo., 1971). Respondent's plea stems from his participation in a major LSD manufacturing and distribution ring in the San Francisco Bay area. This conviction is for the felony of distributing a Schedule I hallucinogen, a most serious offense. The underlying facts leading to the plea show that Respondent's continued registration with DEA is inconsistent with the public interest.

The factors of Respondent's compliance with applicable laws relating to controlled substances, and his conduct that endangers the public health and safety, are closely intertwined. Respondent was an active participant in a ring that manufactured and distributed LSD. During the spring of 1985, Respondent, his wife and others conspired to sell large quantities of high-quality LSD. Respondent accepted \$18,000 for ten grams of LSD on May 1, 1985 and sold another gram of LSD on May 2, 1985, for \$1,900. A search of Respondent's home by DEA Special Agents on August 14, 1985, pursuant to a search warrant issued by a Federal magistrate, uncovered a formula to manufacture LSD. This was not a small operation. DEA officials involved estimated that based on the quantities of LSD seized and the records of the ring, these arrests immobilized a very important source of LSD in the United States.

Respondent's history of compliance with laws relating to controlled substances speaks for itself. The mercenary participation of this physician in a major LSD ring is abominable. Such activity also clearly endangers the public health and safety. The effects of LSD on its users and on society are so well-known that the Administrator will not recite them here. It is unthinkable that a physician would even countenance such distribution and manufacture, much less actively engage in these dangerous activities. Dr. Stepak should not be registered with DEA.

The facts in this case clearly establish that Respondent's registration should be revoked, even though his activities did not involve use of his DEA registration. In cases brought under 21 U.S.C. 823(a)(2), the Administrators of DEA have consistently held that the underlying controlled substance-related felony need not involve the DEA

registration to justify revocation or denial of application. See *Aaron Moss, D.D.S.*, Dk. No. 80-2, 45 FR 72850 (1980) (smuggling of cocaine); *William H. Carranza, M.D.*, Dk. No. 84-23, 51 FR 2771 (1986) (smuggling of heroin). So it is here. The totality of the facts lead to the inescapable conclusion that the registration issued Dr. Stepak should be revoked.

21 U.S.C. 824(a)(4) provide that a registration may be revoked upon a finding that the registrant has committed such acts as would render his registration inconsistent with the public interest, as determined under 21 U.S.C. 823(f). Accordingly, there is a lawful basis for revoking all, or some portion of, Respondent's registration.

Having examined the record as it appears, including the letter submitted by Respondent, pursuant to the authority given the Attorney General under 21 U.S.C. 823 and 824, and delegated to the Administrator of the Drug Enforcement Administration under 21 U.S.C. 871 and 28 CFR 0.100, the Administrator hereby revokes DEA Certificate of Registration AS2286537, previously issued to Paul Stepak, M.D., and denies any pending applications for renewal, said revocation and denial effective June 12, 1986.

Dated: May 6, 1986.

John C. Lawn,
Administrator.

[FR Doc. 86-10722 Filed 5-12-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Record keeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or

reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
New Jersey Reemployment Demonstration Project
ETA RC 87

As needed
Individuals or households
56,000 respondents; 5,500 hours; no forms

This demonstration project is designed to evaluate whether displaced workers can be identified early in the unemployment spell, test the ability of alternative employment services to reemploy the displaced and how such a program could be implemented.

Extension

Employment Standards Administration
Housing Occupancy Certificate—
Migrant and Seasonal Agricultural Worker Protection Act

1215-0158; WH-520
Annually

Individuals or households; Farms;
Businesses or other for-profit; Small businesses or organizations
350 responses; 18 hours; 1 form

Section 203(b)(1) of the Migrant and Seasonal Agricultural Worker Protection Act requires any person owning or controlling any facility or real property to be occupied by migrant agricultural workers to obtain a certificate of occupancy.

Occupational Safety and Health Administration

Mechanical Power Press Injuries, OSHA 180

1218-0070; OSHA 180

On occasion

Business or other for-profit

264 responses; 80 hours; no forms

OSHA is required to conduct an ongoing analysis of mechanical power press injuries in order to monitor the effectiveness of the standard and to evaluate causes of injuries to determine the need for standard revision. This analysis cannot be made without collecting information on power press accidents.

Reinstatement

Employment Standards Administration
Employee Mail Interview Form

1215-0011; WH-42

On occasion

Individuals or households

100,000 responses; 33,333 hrs.; 1 form

This form is used in selected instances during the course of an investigation for compliance under the Fair Labor Standards Act, Public Contracts Act, and Davis-Bacon and related Acts.

1215-0016; WH-31

On occasion

Individuals or households

50,000 responses; 50,000 hours, 1 form

This form is used by Compliance Officers to record oral interviews with employees of establishments under investigation to determine compliance with the FLSA, the Migrant and Seasonal Agricultural Worker Protection Act, Service Contract Act, Davis-Bacon and related Acts, or the Consumer Credit Protection Act.

Signed at Washington, DC this 8th day of May 1986.

Reggie Moore,

Acting Departmental Clearance Officer.

[FR Doc. 86-10760 Filed 5-12-86; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Electric Shavers and Parts Thereof

On March 27, 1986, the U.S. International Trade Commission (ITC) determined that increased imports of electric shavers and parts thereof are not a substantial cause of serious injury or the threat thereof to the domestic industry for purposes of the import relief provisions of the Trade Act of 1974. (51 FR 11361)

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever the ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance, and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of information which the Secretary determines to be confidential).

The U.S. Department of Labor has concluded its report on electric shavers and parts thereof. The report found as follows:

1. Employment of all workers and of production and related workers increased steadily from 1980 to 1984. During the first nine months of 1985, employment of all workers was higher than during the same period of 1984; however, employment of production and related workers was lower for the same comparative periods.

2. The Department of Labor (DOL) has received one petition for trade adjustment assistance (TAA) from workers in the electric shavers industry since April 3, 1975, the effective date of the adjustment assistance program under the Trade Act of 1974. This investigation was terminated at the written request of the petitioners.

3. The TAA program, which was due to expire on September 30, 1985, was extended as a program from October 1, 1985 through December 19, 1985 by a series of Congressional continuing resolutions and legislation. With the Third Continuing Resolution of 1985

(Pub. L. 99-199), statutory authority for providing training, job search and relocation allowances, and other reemployment services was continued through September 30, 1986. However, authority for paying trade readjustment allowances (TRA), or cash payments, to workers certified for TAA was allowed to expire on December 19, 1985.

Under existing legislation, DOL budgeted an estimated \$45.0 million for Fiscal Year (FY) 1985 TRA payments and an estimated \$5.0 million for FY 1986 TRA payable to qualified workers for weeks of retroactive eligibility in FY 1985. However, on April 7, 1986 the President signed into law the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) which among its provisions extends the TAA program through September 30, 1991, provides for retroactive payments of TRA back to December 19, 1985, and links receipt of TRA benefits to participation in job search programs (Sections 13001-13009).

For FY 1985, Congress appropriated \$26.0 million for training, job search and relocation allowances, and related services for all eligible workers of U.S. import impacted industries. In addition, \$12.1 million in State unobligated funds from FY's 1983 and 1984 were available, making a total of \$38.1 million available for these TAA program activities in FY 1985. For FY 1986, Congress appropriated \$26.0 million, but as a result of the Gramm-Rudman-Hollings sequestration that amount was reduced to \$24.822 million.

Under the new program, funds appropriated for training, job search and relocation, and related services for eligible workers in fiscal year 1986 remains at \$24.822 million. However, DOL has now budgeted \$106 million for TRA payments for FY 1986.

4. During Program Year (PY) 1985 (July 1, 1985 through June 30, 1986), a total of \$1,861,260 was available for benefits under Job Training Partnership Act (JTPA) Title III, the dislocated worker program, in the State of Connecticut. This funding will be reduced to \$867,640 in PY 1986. In addition, some potentially separated workers could be eligible for JTPA Title II-A disadvantaged worker programs. Title II-A funding in Connecticut was \$15,291,391 in PY 1985 and will be \$13,010,234 in PY 1986.

Copies of the Department's report containing nonconfidential information developed in the course of the six-month investigation may be purchased by contacting Curtis Kooser, Office of Trade Adjustment Assistance, U.S. Department of Labor, 601 D Street, NW., Room 6020, Washington, DC 20213 (phone 202-376-8039).

Signed at Washington, DC this 6th day of May 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86-10758 Filed 5-12-86; 8:45 am]

BILLING CODE 4510-30-M

Wood Shakes and Shingles

On March 25, 1986, the U.S. International Trade Commission (ITC) determined that increased imports of wood shakes and shingles are a substantial cause of serious injury or the threat thereof to the domestic industry for purposes of the import relief provisions of the Trade Act of 1974. (51 FR 11361)

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance, and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of information which the Secretary determines to be confidential).

The U.S. Department of Labor has concluded its report on wood shakes and shingles. The report found as follows:

1. Average employment of production and production-related workers producing wood shakes and shingles declined steadily during 1980-1984 and in the January-September period of 1984 and 1985. Permanent employment levels are expected to continue declining during the March 1986-February 1987 12-month period. Industrywide temporary layoffs are also expected.

2. The Department of Labor (DOL) has received and processed 152 petitions involving workers in the wood shake and shingle industry since April 3, 1975, the effective date of the worker adjustment assistance program, including 10 processed during the January 1983-March 1986 period; 8 of the 10 were certified. Seventy petitions were certified covering 1,075 industry workers, and 82 petitions were denied, or terminated. An additional three petitions covering wood shake and shingle workers were in process as of the date of preparation of this report.

Between April 3, 1975, and September 30, 1985, DOL paid \$2,740,301 in trade

readjustment allowances to 788 workers formerly employed in facilities producing wood shakes and shingles. Workers whose petitions were certified during 1983—March 1986 have received \$7,106. From April 3, 1975, to September 30, 1985, job search allowances of \$1,963 were paid to 19 industry workers, relocation allowances of \$10,264 were paid to 11 industry workers, and a total of \$86,505 was spent on training programs involving 181 industry workers.

3. Most of the production and production related workers' occupations involved in wood shake and shingle operations are considered skilled to highly skilled.

4. Unemployment rates for 17 of the 20 known areas with facilities producing wood shakes and shingles were above the national unemployment rate of 6.7 percent (unadjusted) for December 1985. Reemployment prospects for most present and potential separated workers in areas with establishments responding to the DOL survey of domestic wood shake and shingle producers appear to be poor-to-fair.

5. The Trade Adjustment Assistance (TAA) program, which was due to expire on September 30, 1985, was extended as a program from October 1 through December 19, 1985, by a series of congressional continuing resolutions and legislation. With the Third Continuing Resolution of 1985 (Pub. L. 99-199), statutory authority for providing training, job search and relocation allowances, and other reemployment services was continued through September 30, 1986. However, authority for paying trade readjustment allowances (TRA), or cash payments, to workers certified for TAA was allowed to expire on December 19, 1985.

Under existing legislation, DOL budgeted an estimated \$45.0 million for Fiscal Year (FY) 1985 TRA payments and an estimated \$5.0 million for FY 1986 TRA payable to qualified workers for weeks of retroactive eligibility in FY 1985. However, on April 7, 1986, the President signed into law the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) which among its provisions extends the TAA program through September 30, 1991; provides for retroactive payments of TRA back to December 19, 1985; and links receipt of TRA benefits to participation in job search programs (Sections 13001-13009).

For FY 1985, Congress appropriated \$26.0 million for training, job search and relocation allowances, and related services for all eligible workers of U.S. import impacted industries. In addition, \$12.1 million in State unobligated funds

from FY's 1983 and 1984 was available, making a total of \$38.1 million available for these TAA program activities in FY 1985. For FY 1986, Congress appropriated \$26.0 million, but as a result of the Gramm-Rudman-Hollings sequestration that amount was reduced to \$24.822 million. The amount of unobligated funds that might be available during FY 1986 was not known as of the date this report was prepared.

Under the new program, funds appropriated for training, job search and relocation, and related services for eligible workers in FY 1986 remain at \$24.822 million. However, DOL has now budgeted \$106 million for TRA payments for FY 1986.

6. Dislocated workers from the wood shake and shingle industry may receive benefits from a fund of \$95.7 million which has been set aside for Program Year 1986 (July 1, 1986—June 30, 1987) for the administration and delivery of dislocated worker benefits and services under Title III of the Job Training Partnership Act.

Copies of the Department's report containing nonconfidential information developed in the course of the 6-month investigation may be purchased by contacting Linda Poole, Office of Trade Adjustment Assistance, U.S. Department of Labor, 601 D Street, NW., Room 6020, Washington, DC. 20213 (phone 202-376-6196).

Signed at Washington, DC, this 8th day of May 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86-10759 Filed 5-12-86; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-86-45-C]

Pine Creek Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Pine Creek Mining, Inc., Box 418, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment, maintenance) to its No. 2 Mine (I.D. No. 46-06996) located in Logan County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 12, 1986. Copies of the petition are available for inspection at that address.

Dated: May 5, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-10757 Filed 5-12-86; 8:45 am]

BILLING CODE 4510-43-M

LIBRARY OF CONGRESS

American Folklife Center Board of Trustees; Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Pub. L. 94-463.

DATE: May 23, 1986, 9:30 a.m. to 4:30 p.m.

ADDRESS: Whittall Pavilion, Jefferson Building, Library of Congress, 10 First Street SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond I. Dockstader, Deputy Director, America Folklife Center, Washington, DC 20540.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader (202) 287-6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate programs that provide coordination, assistance, and model projects for the field of American folklife.

Dated: May 5, 1986.

Glen A. Zimmerman,

Associate Librarian for Management.

[FR Doc. 85-10660 Filed 5-12-86; 8:45 am]

BILLING CODE 1410-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Reliability Assurance; Meeting

The ACRS Subcommittee on Reliability Assurance will hold a meeting on May 23, 1986, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Friday, May 23, 1986—8 a.m. until the conclusion of business.*

The purpose of the meeting will be to discuss research associated with reliability research (reliability maintenance), mechanical and electrical equipment qualification, and plant

aging. Related topics will also be discussed including seismic fragility of components (e.g., relay chatter) and the ability of containment isolation valves to close under accident flow.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 8, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-10740 Filed 5-12-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by 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 and Information Services, 450 Fifth Street NW., Washington, DC 20549

Extension:

Rule 206(3)-2 [17 CFR 275.206(3)-2] File No. 270-216

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 206(3)-2 under the Investment Advisers Act of 1940, Agency cross transactions for advisory clients.

Comments should be submitted to OMB Desk Officer: Sheri Fox, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503.

Dated: May 6, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-10754 Filed 5-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23209; File No. SR-NSCC-86-06]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Securities Clearing Corporation Modifying its Fee Structure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 21, 1986, the National Securities Clearing Corporation ("NSCC") filed with the Commission the proposed rule change described below. The Commission is publishing this Notice to solicit comments on the proposed rule change.

The proposed rule change modifies NSCC's fee structure to establish a fee for processing an adjustment to a customer's account number in the Automated Customers Account Transfer ("ACAT") system. The Commission previously approved NSCC's ACAT system (File No. SR-NSCC-85-07) in Securities Exchange Act Release No. 22481,¹ and a modification to that system (File No. SR-NSCC-86-01) in Securities Exchange Act Release No. 22858 ("Release No. 22858").²

NSCC's ACAT system enables members to effect automated transfers of customer accounts among themselves. An NSCC member to whom a customer's securities account is to be transferred initiates the account transfer

¹ (September 30, 1985), 50 FR 41274 (October 9, 1985).

² (February 4, 1986), 51 FR 5127 (February 11, 1986).

process by filing with NSCC a Transfer Initiation Request ("TIR"). Previously, if there was an error in the customer's account number on the TIR, the delivering member would reject the transfer and the NSCC member to whom the account is being transferred would have to re-initiate the transfer process by submitting another TIR. The modification to the system approved in Release No. 22858 permits NSCC to accept adjustments to customers' account numbers rather than reject the transfers. NSCC is now proposing to establish a \$.10 fee for processing each adjustment to a customer's account number in the ACAT system. This fee will be discounted in the same manner as other ACAT service fees.

In its filing NSCC states that the proposed rule change is consistent with section 17A(b)(3)(D) of the Act because it provides for the equitable allocation of fees among NSCC Participants. NSCC also states that, inasmuch as the proposed rule change relates only to NSCC's Fee Structure, it does not affect the safeguarding of securities and funds in NSCC's custody or control or for which it is responsible.

The foregoing rule has become effective pursuant to section 19(h)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 45 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of NSCC. All

submissions should refer to the file number in the caption above and should be submitted by June 3, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 6, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-10755 Filed 5-12-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Ally Financial Corp.

[License No. 09/09-5299]; Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1986)) for a transfer of control and ownership of Ally Financial Corporation, 9100 Wilshire Boulevard, Suite 408, Beverly Hills, California 90212 under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*) and the Rules and Regulations promulgated thereunder.

The present shareholders plan to sell 67 percent of their shares of ownership in the Licensee, along with issuing and selling 400,000 additional shares to new shareholders. The proposed change in ownership and control would result in the following:

Name and address	Number of shares	Percentage
Percy Painsin Linn, 137 S. Palm Dr. #305, Beverly Hills, CA 90212	120,000	12.0
Walter Wen-Der Wu, 2735 Carlaris Road, San Marino, CA 91108	25,000	2.5
Ting and Esther Liu, 19839 Hiawatha Street, Chatsworth, CA 91311	235,125	23.5
Ping-Chi Wu, 567 Peralta Hills Drive, Anaheim, CA 92807	171,000	17.1
Ko Yen Lin, 4231 Balcony Drive, Woodland Hills, CA 91364	85,500	8.6
Chao Ho Lin, 4234 Balcony Drive, Woodland Hills, CA 91364	42,750	4.3
Yukiyo Matsumura, 4215 Balcony Drive, Woodland Hills, CA 91364	64,125	6.4
Wen Cherrng Lee, 4231 Balcony Drive, Woodland Hills, CA 91364	42,750	4.3
Fui Ming Thian, 2332 Flintridge Drive, Glendale, CA 91206	17,100	1.7
Fai Boon Thian, 2315 Flintridge Drive, Glendale, CA 91206	17,100	1.7
Yee Chin Thian, 2309 Flintridge Drive, Glendale, CA 91206	68,400	6.8
Alan Yee-Phong Thian, 2314 Flintridge Drive, Glendale, CA 91206	68,400	6.8

Name and address	Number of shares	Percentage
Hsin Lee Lin, 2233 Carwile Drive, Alhambra, CA 91308	42,750	4.3

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new owners under their new management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Beverly Hills, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 6, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-10681 Filed 5-12-86; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 06/06-0292]

Ford Capital, Ltd.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Ford Capital, Ltd. (Applicant), 1525 Elm Street, Dallas, Texas 75221, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1986).

The management and control of the Applicant are the officers and directors of Ford Capital, Inc., Corporate General Partner, as follows:

Name and Position

Gerald J. Ford, 3804 Miramar, Dallas, Texas 75205, President/Director, Ford Capital, Ltd. (100 Percent Shareholder)
 Robert W. Gentry, 3545 Southwestern, Dallas, Texas 75225, Vice President, Secretary & Director, Ford Capital, Ltd.
 Donald E. Cosby, 4713 96th Street, Lubbock, Texas 79424, Director, Ford Capital, Ltd.

Ford Capital, Inc. is in the process of being organized for the purpose of

operating as the corporate general partner of Ford Capital, Ltd.

The capital for Ford Capital, Ltd. (the "Limited Partnership") will be raised by offering Units in the Limited Partnership privately to numerous banks.

The Applicant, Food Capital, Ltd., a Texas Limited Partnership, will begin operations with \$7,810,310 net partnership private capital. The Applicant will conduct its activities primarily in the State of Texas but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Dallas, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 6, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-10682 Filed 5-12-86; 8:45 am]

BILLING CODE 8025-01-M

Intergovernmental Review of Agency Programs and Activities

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund the Wyoming Small Business Development Center (SBDC) during fiscal year 1986. Currently, there are 45 SBDC's operating in the SBDC program. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to the SBDC to be refunded. This publication is being made to provide the State single point of contact

designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through August 1, 1986.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of the Wyoming Small Business Development Center (SBDC) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published three months in advance of the date of refunding of this existent SBDC. Relevant information identifying this SBDC and providing its mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single point of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 80 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 80-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain

accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing in-depth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with the SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

- Strengthen the small business community;
- Contribute to the economic growth of the communities served;
- Make assistance available to more small businesses than is now possible with present Federal resources; and

- (d) Create a broader based delivery system to the small business community.

SBDC Program Organization:

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of in-depth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association), exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of

existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small businesses that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: May 6, 1986.

Charles L. Heatherly,
Acting Administrator.

Address of Relevant SBDC Director

Mr. Mac Bryant, Wyoming SBDC State Director, Casper Community College, 944 East Second Street, Casper, Wyoming 82601, (307) 235-4825.

[FR Doc. 86-10683 Filed 5-12-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 965]

Subdelegation of Legal Adviser's Authority To Sign Receiving Agents Warrants; Delegation of Authority No. 142-1

By virtue of the authority vested in me by Delegation of Authority No. 142 of October 13, 1978 (43 FR 50981), I hereby delegate to the Deputy Legal Advisers all the authority and functions vested in the Legal Adviser by Delegation of Authority No. 142, which relates to issuance and signature of warrants appointing agents to return fugitives from justice extradited to the United States. Notwithstanding this delegation of authority, the Legal Adviser may at any time exercise any authority conferred upon him by Delegation of Authority No. 142.

Dated: April 28, 1986.

Honorable Abraham D. Sofaer,
Legal Adviser.

[FR Doc. 86-10666 Filed 5-12-86; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86-5-31]

Aviation Proceedings; Fitness Determination of Princeton Air Link

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order 86-5-31, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Princeton Air Link is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses:

All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, P-47, Department of Transportation, 400 7th Street SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than May 28, 1986.

FOR FURTHER INFORMATION CONTACT: Kathy A. Lusby, Special Authorities Division, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 755-3812.

Dated: May 7, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-10739 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

**Environmental Impact Statement;
Niagara County, NY**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Niagara County, New York.

FOR FURTHER INFORMATION CONTACT:

Roger H. Edwards, Director, Facilities Design Division, New York State Department of Transportation, State Campus, 1220 Washington Avenue, Albany, New York 12232, Telephone: (518) 457-6452

or

Victor E. Taylor, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 472-3616.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of

Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on a proposal to construct a new two-lane bypass around the central area of the City of Lockport, Town of Lockport, in Niagara County. The proposed work is considered necessary to alleviate the problem of truck traffic passing through the central area of the City of Lockport and to improve east-west access to the western Lockport industrial area.

Alternatives under consideration include (1) continued maintenance of the existing highway system; (2) low-cost operational improvements to the existing system; and (3) construction of a new two-lane bypass on five alternative highway locations identified as the West Canal, East Canal, Central, Ruhlmann Road Extension, and Summit Street. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Also planned are early coordination and exchanges of information with the public and agencies through public information meetings, direct requests to other agencies to become cooperating agencies, and early notification and solicitation with entities affected by the proposed action through the clearinghouse process. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearings. The draft EIS will be available for public and agency review and comment. No formal scoping meeting is planned at this time.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

Issued on April 29, 1986.

Victor E. Taylor,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 86-10659 Filed 5-12-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 217]

Delegation of Authority to Regional Commissioner, Western Region

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority to resolve pricing issues on interaffiliate transfers of electronic products and components that are manufactured and/or assembled abroad by foreign companies that effectively own or control United States affiliates which market the goods within the United States has been delegated to the Regional Commissioner, Western Region. This authority may not be redelegated.

EFFECTIVE DATE: May 2, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Romoff, OP:EX:N:1 Room 2511, 1111 Constitution Avenue NW., Washington, DC 20224, (202) 566-6744 (not toll free).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

William C. Roth,

Director, Office of National and International Programs.

Nationwide Authority To Approve Determinations on Interaffiliate Pricing of Inbound Transfers of Electronic Products and Components

Pursuant to authority vested in the Commissioner of Internal Revenue by IRC 7802, 26 CFR 1.482, 301.7701-9, and Treasury Department Order No. 150-37, the nationwide authority to approve the determination of intercompany transfer prices of electronic products and components that are manufactured and/or assembled abroad by foreign companies that effectively own or control United States affiliates which market the goods within the United States is hereby delegated to the Regional Commissioner, Western Region. The appeals authority regarding such issue shall remain with the Appeals Division.

This authority may not be redelegated.

Dated: May 2, 1986.

Approved: James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 86-10761 Filed 5-12-86; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register

Vol. 51, No. 92

Tuesday, May 13, 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).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, May 19, 1986, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Policy Statement on Accent
4. Annual Report: Coordination of Federal Equal Employment Opportunity Programs, FY 1985
5. Proposed Contract for Expert Services in Connection With a Court Case

Closed

1. Litigation Authorization: General Counsel Recommendations
2. Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals
3. Proposed Commission Decisions

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE

INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated: May 8, 1986.
Cynthia C. Matthews,
Executive Officer, Executive Secretariat,
 [FR Doc. 86-10822 Filed 5-9-86; 2:37 p.m.]
BILLING CODE 6750-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:37 p.m. on Wednesday, May 7, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) A recommendation regarding the Corporation's assistance agreement with an insured bank pursuant to section 13(c) of the Federal Deposit Insurance Act; (2) a recommendation regarding the Corporation's corporate activities; and (3) a personnel matter.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(9)(A)(i), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(9)(A)(i), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street NW., Washington, DC.

Dated: May 8, 1986.
 Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary,
 [FR Doc. 86-10819 Filed 5-9-86; 12:43 pm]
BILLING CODE 6714-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 8, 1986.

TIME AND PLACE: 10:00 a.m., Thursday, May 15, 1986.

PLACE: Room 600, 1730 K St. NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will also discuss the following:

2. Pontiki Coal Corporation, Docket No. KENT 83-181-R, etc. (Issues include whether the administrative law judge properly acted on the parties' settlement motion.)

CONTACT PERSON FOR MORE

INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk,

[FR Doc. 86-10816 Filed 5-9-86; 12:43 pm]

BILLING CODE 6735-01-M

4

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, Monday, May 19, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 9, 1986.

James McAfee,

Associate Secretary of the Board,

[FR Doc. 86-10836 Filed 5-9-86; 3:34 pm]

BILLING CODE 6210-01-M

5

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 5-86

**Announcement in Regard to
Commission Meetings and Hearings**

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of a change in the date previously announced in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: The meeting previously set for Mon., May 19, 1986 at 10:30 a.m. is changed to: Tues., May 20, 1986 at 10:30 a.m.

SUBJECT MATTER: Consideration of claims filed under the Ethiopian Claims Program.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111—20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 635-6155.

Dated at Washington, DC, on May 8, 1986.

Judith H. Lock,

Administrative Officer.

[FR Doc. 86-10782 Filed 5-9-86; 10:35 am]

BILLING CODE 4410-01-M

6

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 P.M., Wednesday, June 11, 1986.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of May, 1986.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: May 2, 1986.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 86-10785 Filed 5-9-86; 10:35 am]

BILLING CODE 7550-01-M

7

**OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION**

TIME AND DATE: 10:00 a.m., Thursday, May 15, 1986.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Possible Revisions to the Commission's Rules of Procedure, Subpart B. Parties and Representatives. 29 CFR 2200.20 through 2200.22.

CONTACT PERSON FOR MORE

INFORMATION: Mrs. Mary Ann Miller (202) 634-4015.

Dated: May 8, 1986.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 86-10778 Filed 5-9-86; 10:35 am]

BILLING CODE 7600-01-M

8

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 12, 1986:

A closed meeting will be held on Wednesday, May 14, 1986, at 2:30 p.m. An open meeting will be held on Thursday, May 15, 1986, at 2:30 p.m., followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the

Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meetings in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, May 14, 1986, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive action.

Formal order of investigation.

Institution of administrative proceeding of an enforcement nature.

Opinion.

The subject matter of the open meeting scheduled for Thursday, May 15, 1986, at 2:30 p.m., will be:

The Commission will hear oral argument on appeals by Rooney Pace, Inc., a registered broker-dealer, Randolph K. Pace, its president, and the Commission's Division of Enforcement, from an administrative law judge's initial decision. For further information, please contact R. Moshe Simon at (202) 272-7400.

The subject matter of the closed meeting scheduled for Thursday, May 15, 1986, following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272-3077.

John Wheeler,

Secretary.

May 7, 1986.

[FR Doc. 86-1756 Filed 5-8-86; 4:36 pm]

BILLING CODE 8010-01-M

Register
Federal Register

Tuesday
May 13, 1986

Part II

**Department of
Transportation**

Federal Highway Administration

49 CFR Part 391

Motor Carrier Safety Regulations; Driver
Qualifications; Final Rule—Request for
Comments and Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[BMCS Docket No. MC-116; Amdt. No. 83-17]

Qualifications of Drivers; Drugs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSR) by revising the prohibitive language of the nonalcoholic drug medical standard for interstate and foreign commerce drivers. The new rule will prohibit the use of certain drugs. The present rule prohibits the driver from having a current clinical diagnosis of drug dependence. This change in the rule is necessary because the present language could allow known drug users to continue to drive commercial motor vehicles with the knowledge of their drug use. In addition to this final rule, the FHWA requests comments and information on the question of whether the prohibited nonalcoholic drugs should include all controlled substances on the Drug Enforcement Administration's Schedules of Controlled Substances. Further, comments are requested on whether drug screening should be mandated.

DATES: This rule is effective June 12, 1986. Written comments must be received on or before August 11, 1986.

ADDRESS: All written comments should refer to the docket number and amendment number that appears at the top of this document and should be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 to 4:15 p.m., ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 755-1011; or Mr. Thomas P. Holian, Office of Chief Counsel, (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On November 5, 1984, the FHWA published a final rule in the *Federal Register* (49 FR 44210) which amended the FMCSR to

incorporate in the driver qualification requirements prohibitions in the transportation, possession, and use of drugs and other substances listed in Schedule I of the Drug Enforcement Administration's Schedules of Controlled Substances (SCS). There are approximately 100 drugs and other substances in Schedule I of the SCS. The action was taken because these substances degrade driving skills.

One of the amendments made by the November 5, 1984, final rule changed 49 CFR 391.41(b)(12). This provision concerns physical qualifications for drivers. Before the November 5, 1984, final rule, the subparagraph provided that a physically qualified driver, is one who "does not use an amphetamine, narcotic, or any habit-forming drug."

The November 5 final rule amended the rule to state that a physically qualified driver is one who,

Has no current clinical diagnosis of a drug dependence of a Schedule I drug or other substance identified in Appendix D to this subchapter, an amphetamine, narcotic, or any other habit-forming drug.

Among other changes, the amendment provided that use of one of the cited substances, standing alone, was no longer a disqualifying condition. Only having a current clinical diagnosis of dependence on one of the substances was a disqualifying condition. This change was intended to make the regulations consistent in their treatment of drug and alcohol abuse. The FMCSR require that a physically qualified driver have "no current clinical diagnosis of alcoholism" (49 CFR 391.41(b)(13)).

On October 1, 1985, the FHWA proposed to amend the FMCSR by revising the prohibitive language of the nonalcoholic drug medical standard (Section 391.41(b)(12)) for interstate and foreign commerce drivers (50 FR 40040). The revision proposed that the prohibitive language be changed to the previous language whereby a driver is prohibited from use of certain nonalcoholic drugs. The proposed revision did not change the type of prohibited drugs.

The reasons cited for the proposed change were:

(1) The purpose of the FMCSR is to ensure safety of highway travel by, among other means, getting unqualified drivers off the road. A user of drugs, whether he or she is addicted to, or a recreational or occasional drug user, of certain substances, is a potential safety hazard on the highway.

(2) It is difficult to establish a diagnosis of drug dependence in general. For some drugs, experts disagree about

whether dependence ever occurs (e.g., marijuana).

(3) The problem from a motor carrier safety point of view is that a driver, though not subject to a clinical diagnosis of drug dependence, may create a serious safety hazard by even a one time or occasional use of drugs.

(4) The physical qualification standards are prevention in nature. The aim is to remove persons who are potentially a clear safety hazard to the public. It is fair to judge that a person who uses drugs, even though not clinically addicted to them, is more likely to be a hazard while driving under their influence than a person who does not use drugs.

(5) Finally, a driver is medically evaluated only once every two years. A driver who uses drugs now is more likely to become clinically drug dependent than someone who does not.

Analysis of Comments

Two hundred and fourteen comments were submitted to this rulemaking. There was overwhelming support for the proposal. Two hundred and twelve commenters supported the proposal. One commenter did not support the proposal. Those supporting the proposal are grouped as follows: 28 individuals, 143 motor carriers, 33 physicians, and 8 motor carrier industry associations. A State government agency comment addressed a subject that is not germane to the proposal. Several other commenters asked that the docket be broadened to consider whether the FMCSR should mandate chemical testing of body fluids for drugs. This subject will be discussed later in this document.

Comments in Support of the Proposal

The comments of the motor carrier industry are typified by those of the Federal Express Corporation:

Federal Express has taken it upon itself to develop an internal policy prohibiting drug use by all employees, including its couriers, in order to ensure the safest conditions possible on public highways.

We deemed a policy of this type necessary in light of the extreme difficulty in determining whether an individual has a current clinical diagnosis of drug dependence. Due to the nature of drug use, majority of physicians will not render this diagnosis even when a person is regularly using illegal substances.

Moreover, operators of motor vehicles who use drugs in an experimental, casual or even abusive manner, which may not be included in the status of those dependent on a drug, clearly present a danger when operating a vehicle. Finally, due to the fact that neither the medical profession nor the legal system has been able to determine standards, based

on chemical analysis of urine, which accurately indicate whether an employee is under the influence of a particular drug, an employer must assume that any individual who is shown to have drugs in his system, indicating recent use, presents a possible threat to safety.

The change in the regulation mandates exclusion of employees using drugs and thus strengthens the legal basis for private industry's efforts to eliminate the drug problem. We urge its immediate adoption.

Liquid Carbonic Industries, Inc., currently has a drug screening program for new employees and for the recertification of its drivers. To date, eleven applicants withdrew following their refusal to be screened. Drugs found were marijuana, cocaine, heroin, and phencyclidine (PCP). Enterprise Transportation Company also has a company policy of prohibiting drug use. It has a drug screening program. It believes it is doing its part in removing drug users from the highway but worries about others in motor carrier industry who do not have such stringent standards. Enterprise Transportation states that the FMCSR establish minimum standards but allow a carrier to have more stringent qualifications (49 CFR 391.1). However, Enterprise believes that too many motor carriers do not have stringent enough qualifications. Therefore, it states that the FMCSR must be revised to meet the current transportation drug problem.

Ryder Truck Rental, Inc., submitted data from a recent report of the Insurance Institute for Highway Safety:

A recent report to be published by the Insurance Institute for Highway Safety, noted that more than 25 different drugs were found in the blood of young California men (age 15-34) who were killed as drivers of motor vehicles. * * *. 87% of the drivers with one drug in their blood were found to have been responsible for their crashes, while 96% of those with two or more drugs evident were at fault in their accidents. I seriously doubt that a significant percentage of these young men had a current clinical diagnosis of drug dependence at the time of their deaths.

Bee Line Motor Freight, Inc., has a company policy that any prohibited drug use within the previous twelve months is disqualifying. At present they are not doing urine drug screening. Bee Line believes the proposed change will add greatly to the preventive aspect of the medical certification process.

Murphy Motor Freight Lines, Inc., cited the repetitive vigilance aspects of commercial driving and noted the general deterioration of vigilance that use of Schedule I drugs cause. Further, it points out that though an employee's family and friends may be aware of an employee's drug problem, commonly the employer is not. Therefore, when the

drug use finally comes to the employer's attention, the employer can be fairly certain that the abuse is of a serious nature. If an employee cannot hide his/her drug use at work, then Murphy believes this in and of itself should be evidence of a user's dependence.

The American Trucking Associations, Inc. (ATA), believes the current prohibitive language, "must show dependence on a prohibitive drug," is unduly burdensome and seriously hinders the truck industry in its efforts to remove substance abusers from the ranks of drivers. Further, it states that various industry studies agree that substance abusers are three to four times more likely to be involved in accidents than nonusers. The ATA states that while these data do not relate specifically to traffic accidents, the increased risks while in traffic are probably commensurate with those in industry generally. The ATA gave some information it gathered from its members who have a company policy of urine drug screening of its employees. It believes the findings confirm that a problem exists:

A laboratory which performs drug screens for several major carriers indicates that it has found from 13-18% of drug screens done for reexaminations to be positive. This has occurred even where carriers have given 30-60 days notice that the drug screening will be done. Other laboratories who do drug screening have indicated to ATA their opinion that the proposed amendment should be promulgated.

A carrier which did drug screens on 863 persons including current employees, casuals, and job applicants, found that 118 screens (17%) were positive. A carrier screening applicants in a major Midwestern city found positive drug screens for 47% of applicants checked.

A safety director making spot checks of his company's tractors found evidence of marijuana use. The ensuing indepth investigation resulted in the discharge of 50% of the drivers at the terminal involved.

The ATA believes attempting to demonstrate a current clinical diagnosis of drug dependence is too uncertain to be an effective means of evaluating a person's medical qualification to drive. Comments of the Truck Renting and Leasing Association (TRALA) state its belief that the FHWA should take a stronger lead in removing drug users from the highways. They believe this proposal shows that the FHWA is taking that lead. TRALA states:

The rules governing qualification for drivers, 49 CFR Part 391, are preventive in nature; they serve not only the immediate goal of removing from the road persons who present clear hazards before an accident occurs, but also the broader goal of policy articulation. Thus the BMCS reaffirmation of its strict drug policy sets a standard for

industry and labor, keeping attention focused on the seriousness of the problem.

The concern of the medical profession was set forth in the following statement of a physician retained to perform DOT-mandated medical examinations for a major general freight carrier:

In my opinion, there is no room on our highways for drivers using mind altering drugs that significantly increase the risk of catastrophic events. In my 20 years' experience in industrial medicine, I can state without equivocation that a mind under the influence of drugs and alcohol cannot react nor maintain appropriate attention span to be any less than a lethal hazard to all our citizens.

Comments like these were received from 33 other physicians. Many of the physicians were speaking not only for themselves but other physicians in their industrial clinics or group practices that they worked with.

One physician states the benefits of the proposal to change the prohibitive language of the nonalcoholic drug as follows:

The current rule which provides that the driver "has no clinical diagnosis of a drug dependence" imposes a much more difficult problem in terms of establishing this fact. The establishment of drug dependence cannot actually be made on basis of a routine type office examination.

A more precise wording such as is proposed in the new regulation would be much easier to determine in that it would simply indicate that the use of these drugs is enough to disqualify a driver. The use, whether occasional or habitual, would be subject to confirmation with an appropriate urine and blood test where usage was suspected. This test might be a routine part of the examination, or it could be administered only in those cases where drug use was suspected. At any rate, the examining physician would be in a much more secure position in answering this question, and furthermore, it is my considered opinion that even if drug dependence is not present, even the occasional use of these prohibited drugs does impose a serious safety hazard for a driver of a large motor vehicle on the highways.

Mr. Ron O. Smock of Drug Detection Services, Inc., notes the potential liability of a motor carrier who knowingly permits a drug user to drive. Also, he points out that drug users do not have public acceptance to use drugs:

Any company could be liable if they know an individual is positive for drugs in their system and is put behind a wheel because the company could not demonstrate dependence. The company might just as well play Russian Roulette!

The impact on the company, the driver, and especially the public is so enormous that considering use vs. dependence should go without argument. The loss of one life, one

vehicle, is one too many. The public must end up paying double for all the problems. First by not being guaranteed a safe highway, and secondly by the cost of goods that must be increased because of the loss of property (and possibly life) caused by one individual who has voluntarily violated the law.

Laws are made to be examples of proper behavior in any society—they divide right from wrong; either you follow the law or break the law. There is no public support or law that supports drug use (and possession), which is the first step to dependence—not the other way around! In light of this, we can not say that drug use is OK until it has been demonstrated that there is a dependence.

The Keverly Laboratories, Inc., makes the following three points about drug users:

1. While a driver is under the influence of drugs he endangers the public and himself regarding accidents, whether he is an occasional or drug dependent user. It has been shown that the drug abuser is 3 to 4 times more likely to be involved in accidents at work and 4 to 6 times more likely to be involved in accidents away from work.

2. It has been documented that drug abusers perform at approximately 67% of their normal ability and their overall morale is significantly decreased.

3. It has been our experience that as many as 30% or more of pre-employment drugs of abuse screens including cannabinoids, in transit occupations may be positive.

Dr. Martin Rodriguez of the Maryland Medical Clinic comments that the proposal will have a unifying effect within the motor carrier industry and better serve the goal of removing drug users from the highways:

Usage of alcohol and rules governing this problem have been compared as similar. The similarity is very limited to the fact that the use of both are prohibited while operating a motor vehicle. However, alcohol is treated with more definite action in that law enforcement officers have been provided with various methods of detection. Drugs should be treated in a like manner.

The trucking industry, as I view it, has [a] responsibility to enforce the regulations relating to alcohol and has a large number of law enforcement personnel to assist. When it relates to drugs, the industry is bearing this burden all alone, and in most cases each trucking company is trying to fight this battle individually. A method to unify all these individual efforts would certainly make giant steps to begin dealing with the drug problem.

All the physicians and medical personnel believe that known drug users should not be qualified to drive in interstate or foreign commerce whether the drug user was an occasional drug user or drug dependent.

Twenty-eight individuals commented in the affirmative for the proposal. In general, they commented that the

proposal would make the trucking industry a safer industry.

Comments Not in Favor of the Proposal

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen, Helpers of America (IBT) was the sole commenter not favoring the change in the prohibitive language for nonalcoholic drugs from that which prohibited a driver from having a current clinical diagnosis of drug dependence to that prohibiting a driver from using the nonalcoholic drugs named in § 391.41(b)(12). The IBT noted that they do not condone illegal drug use and that they, along with the motor carrier industry, have developed a labor/management agreement to combat it. The IBT argues that the prohibitive language of § 391.41(b)(12) should not be changed for three specific reasons. They are:

1. A return to the former language of § 391.41(b)(12) is not supported by medical evidence.

When FHWA amended the drug rules, they did so based on solid medical evidence that alcohol problems and drug problems affecting qualification to drive should be addressed similarly. Since that section deals with physical qualifications which are evaluated by a physician, an "in use" type regulation is not consistent with the physical qualifications section of the regulations. We know of no new evidence (medical or otherwise) which would support a return to an "in-use" specification under the physical qualifications sections of the regulations.

2. A return to the former language of § 391.41(b)(12) is not needed to keep drug users from driving because such users can be disqualified under § 391.15.

Although FHWA amended the drug rules in November, 1984, they retained § 391.15, which lists drug use as a disqualifying offense. In other words, the industry has the right under § 391.15, to remove a driver using drugs absent a medical determination of drug dependence. Because drug users can be kept from driving under § 391.15, clearly, an amendment to the regulation is not needed.

3. A return to the former language of § 391.41(b)(12) is legally unsupportable under the physical qualifications section of the regulations.

Although we oppose the proposed amendment, if it were adopted, such a provision would be legally—unsupportable—

For example, who, other than a medical doctor, would be able to determine during a physical examination whether a driver is "using" drugs? How would "drug use" be determined? For example, could a single

urine screening test for marijuana, which is known for its unreliability, be used to deem a driver not physically qualified to drive under the regulations? Does "no use of drugs" mean no use of a prescription drug or over-the-counter drug which may contain small amounts of a substance listed on Schedule I of controlled substances (such as phenobarbital)? How would such a regulation be implemented by the carriers and enforced by DOT without credible guidelines which are legally supportable? How can the innocent be protected from such a regulation when inexpensive, inaccurate drug screening is going on nationwide to determine so-called "drug use"? These are just a few of the questions that come to mind when the term "use of drugs" is put forth.

In short, we object to an "in-use" provision without extensive evidence and guidelines as to what "drug use" means in terms of a driver's physical qualifications.

Discussion of Comments

An overwhelming number of comments support the proposal to change the prohibitive language of § 391.41(b)(12) from a prohibition against having a current diagnosis of drug dependence to a prohibition against a driver using prohibited drugs. Statements attested to the existence of studies which show an association between drug use and industrial accidents. Statements attested to evidence of drug use within the motor carrier industry. Opinions were given by motor carrier representatives and physicians that a drug user, whether drug dependent or an occasional user, was a potential safety hazard on the highway. Motor carriers expressed concern that they would be subject to liability claims if they knowingly allowed a known drug user, who they could not prove was drug dependent, to drive their commercial motor vehicles.

The IBT argued that the proposal should not take effect because:

1. When the rule was changed in November 1984, it was changed for a good medical reason, namely that it now coincided with another medical drug rule (i.e., the prohibition that a driver cannot have a current clinical diagnosis of alcoholism);

2. There is no need to disqualify for use of nonalcoholic drugs under § 391.41(b)(12) because this is presently addressed under § 391.15; and

3. A return to the former prohibitive language (i.e., prohibiting "use") is too ambiguous as proposed and leads to questions of how use is to be shown, confirmed, etc.

We believe a strong and convincing argument has been made to change the prohibitive language of § 391.41(b)(12) to a prohibition against the use of a Schedule I drug or other substance, an

amphetamine, a narcotic, or any other habit-forming drug. The motor carrier industry, many of its examining physicians, motor carrier associations, and many individuals have put forth several arguments that support the reasonableness and rationale of the proposal.

The first point of the IBT's argument for rejecting the proposal is, that the current prohibitive language is justified because it coincides with the prohibitive language against having a current clinical diagnosis of alcoholism. This argument is weakened by the fact that alcohol use is legal; nonalcohol drug use is illegal except in the case of medical treatment. Also, it is known that most of the nonalcohol drug abuse problem comes from the use of marijuana, heroin and cocaine, all nonmedically prescribed and illegal drugs. Further, alcohol abuse problems on the highway are addressed with long accepted and adequate means of detection and remedial action by State law enforcement efforts, but this is not the case for nonalcoholic drugs. There is no breath analyzer for nonalcoholic drugs and very few performance tests that law enforcement personnel can use to detect nonalcoholic drug use.

Therefore, the means to rid the highways of commercial motor vehicle drivers who use illicit or licit drugs is primarily through the medical certification process. The medical standards are preventive in nature and it is reasonable to remove drug users prior to their having an accident associated with their drug use.

The IBT makes a second point that there is no need for the change because drug users are disqualified under § 391.15. Section 391.15 disqualifies a driver for a criminal conviction of using drugs while on duty in the employ of a motor carrier. It is a reactive regulation addressing situations where a criminal conviction has taken place. From the evidence submitted by the commenters concerning drug use rates, few drivers would be subject to disqualification under § 391.15. Motor carriers initiate motor vehicle license violation checks as part of the employment process. These checks do not reveal drug conviction rates similar to the drug use rates.

The third point made by the IBT states that the proposal language is legally unsupportable. The IBT's third point does raise several issues as to whether additional regulations should stipulate what specific drugs are to be regulated,

how to test for drug use, and what to do in case of a positive drug finding.

Several commenters supporting the proposal raised similar issues. They made a strong argument that the examining physician is hardly likely to elicit drug use information voluntarily from the examinee in the history taking part of the examination, and that the examining physician can miss signs and symptoms of drug use since they can be hidden or are subtle in nature. These commenters proposed that the FMCSR medical standards incorporate provisions to mandate that all driver examinees be required to undergo urine drug screen testing. This laboratory test could establish objective evidence of drug use. The FHWA believes the IBT's concerns about reliability of diagnosis of drug use and other commenters' proposals to mandate drug urine screening merit further investigation. Therefore, the FHWA requests comment on the following issues.

1. Should the FHWA mandate urine drug screening for all interstate or foreign commerce drivers?

2. Or should the FHWA only state it permits urine drug screening in the regulation, leaving the decision up to the motor carrier and the examining physician whether to perform the test?

3. Whether urine drug screening is mandated or optional, should the urine drug screening, where positive, be automatically subjected to more specific and sensitive tests for further confirmation.

4. Should the list of prohibited drugs, as now named, be changed to prohibit use of all drugs in the Schedule of Controlled Substances, Schedules I through V? If the SCS is adopted in its entirety, should a provision be added that specifically addresses instances of drivers using SCS drugs under doctor's orders?

The FHWA believes it is reasonable to now change the prohibitive language pertaining to nonalcoholic drugs to a prohibition against the use of Schedule I drugs and other substances, an amphetamine, a narcotic, or any other habit-forming drug. Comments are sought on the subject of broadening the rule to address body fluid testing (i.e., urine, blood, or salivary fluids), confirmation testing, and the inclusion of all SCS drugs as prohibited.

The impact of this final rule will not result in an annual effect to the economy of \$100 million, a major increase in costs or prices, or have a significant adverse effect on the nation's economy. The

FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. This final rule does not add any financial burden to motor carriers; therefore, a full regulatory evaluation has not been prepared. For these reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 391

Driver qualifications—drug prohibition, Highways and roads, Highway safety, Motor Carriers, Physical standards, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: May 7, 1986.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

In consideration of the foregoing, the FHWA is amending Title 49, Code of Federal Regulations, Subtitle B, Chapter III, by revising Part 391 as set forth below.

PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]

1. The authority citation for Part 391 is amended to read as follows:

Authority: 49 U.S.C. 3102; 49 CFR 1.48 and 301.60.

2. Section 391.41(b)(12) is revised to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *

(12) Does not use a Schedule I drug or other substance identified in Appendix D to this subchapter,¹ an amphetamine, a narcotic, or any other habit-forming drug; and

* * * * *

[FR Doc. 86-10645 Filed 5-8-86; 1:10 pm]

BILLING CODE 4910-22-M

¹ A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Bureau of Motor Carrier Safety, Washington, DC 20590, or to any Regional Office of Motor Carrier and Highway Safety of the Federal Highway Administration at the address given in Part 390 of this subchapter.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[BMCS Docket No. MC-116; Notice No. 86-4]

Qualifications of Drivers; Drugs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking; cross reference.

SUMMARY: In a document published in the rules section of this issue of the *Federal Register*, the FHWA is adopting a final rule that will prohibit the use of certain drugs. In that rule, the FHWA is requesting comments on the reliability of diagnosis of drug use and mandatory drug urine screening. This request proceeds from a discussion of the comments to that rule.

DATES: Written comments must be received on or before August 11, 1986.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety (202) 755-1011; or Mr. Thomas P. Holian, Office of the Chief Counsel (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: May 8, 1986.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

[FR Doc. 86-10707 Filed 5-8-86; 1:10 pm]

BILLING CODE 4910-22-M

49 CFR Part 391

[BMCS Docket No. MC-120; Notice No. 86-3]

Qualifications of Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on proposed changes to the driver qualification requirements

contained in the Federal Motor Carrier Safety Regulations (FMCSR). The revisions have been proposed in response to section 206 of the Motor Carrier Safety Act of 1984 and to comments received to an advanced notice of proposed rulemaking (ANPRM) published on January 23, 1985 (50 FR 2998). The proposed revisions will require motor carriers to ensure that drivers who operate: (1) Commercial motor vehicles transporting certain classes of hazardous materials (H/M) or (2) cargo tank (including portable tanks) commercial motor vehicles requiring placards meet additional or more stringent qualification requirements.

DATE: Comments must be received on or before July 14, 1986.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. J. J. Fulnecky, Bureau of Motor Carrier Safety (202) 755-1011; or Mr. Thomas P. Holian, Office of the Chief Counsel (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 11, 1984, Congress passed the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2829) (the Act). The Act was signed into law by the President on October 30, 1984.

On January 23, 1985, the FHWA published an ANPRM in the *Federal Register* (50 FR 2998) seeking public comment concerning possible revisions to the FMCSR. Approximately 50 comments were received concerning these potential changes. Only a few of these comments addressed issues related to Part 391 of the FMCSR; most of these addressed the qualifications of drivers used to transport hazardous materials.

Due to the complexity of the various areas of rulemaking, the FHWA is separating the review of the driver qualification requirements (49 CFR Part 391) from BMCS Docket No. MC-114. Further, in this rulemaking, the FHWA intends to focus its attention on the qualifications of those drivers used in the transportation of the most dangerous classes of hazardous materials and in

the transportation of bulk quantities of hazardous materials by cargo tank (including portable tanks, as defined in § 171.8, but hereinafter referred to as "cargo tanks"). If comments warrant it, the FHWA will open an additional rulemaking docket to address other general driver qualification issues.

ANPRM Comments

In its comments to docket MC-114, the Truck Trailer Manufacturers Association stated that "Since drivers of tank vehicles are usually responsible for the loading and unloading of the tank, they need to have a knowledge of what to do in case of an emergency, either on the highway or at a loading or unloading facility. Drivers who have this responsibility should be trained in the operation of the tank they will be loading and unloading, including characteristics of the product handled, the functions of valves and vents, overfill protection, etc. . . . This training should also include how to close valves and pumps during an emergency and how to do an inspection to assure that all safety equipment is working properly."

The State of Wisconsin, in its comments, ". . . strongly urges that the rule changes provide for enhanced training requirements in the handling of hazardous materials and in emergency procedures. WisDOT [Wisconsin Department of Transportation] recommends that persons who operate commercial motor vehicles transporting hazardous materials be restricted to the possession and use of one valid chauffeurs license. Currently many operators maintain driver licenses in more than one jurisdiction. Their primary purpose is to avoid suspension or revocation by distributing moving violations among the licenses. WisDOT also recommends that any rule provision covering this situation set forth guidelines for uniform penalties."

The State of Minnesota expressed the need for high levels of competency for drivers of commercial motor vehicles. The comments went on to state that "all operators of vehicles transporting hazardous materials should have at least two to three years verifiable experience operating similar vehicles under all weather conditions."

Background

This rulemaking action responds to section 206 of the Act, which requires the Secretary of Transportation (the Secretary) to issue regulations pertaining to commercial motor vehicle safety.

The purposes of the Act, as stated by the Congress, are to promote the safe operation of commercial motor vehicles, to minimize dangers to the health of operators of commercial motor vehicles and other employees whose employment directly affects motor carrier safety, and to assure increased compliance with traffic laws and with the commercial motor vehicle safety and health rules, regulations, standards, and orders issued pursuant to this Act.

The Congress found that it is in the public interest to enhance commercial motor vehicle safety and to reduce highway fatalities, injuries, and property damage. By having more uniform commercial motor vehicle measures and strengthened enforcement, the number of fatalities and injuries, in Congress' view, would be reduced and the level of property damage related to commercial motor vehicle operations would also be reduced. Congress also found that it is in the public interest to enhance protection of the health of commercial motor vehicle operators.

The Transportation of Hazardous Materials

A hazardous material is any substance or material in transportation determined by the Secretary of Transportation to pose an unreasonable risk to health and safety or property.¹ The materials include radioactive materials, poisons, corrosives, explosives, flammable liquids and solids, hazardous wastes, and materials identified as hazardous substances. While these materials are essential to the health, productivity, prosperity, and welfare of our Nation, they also pose safety risks while in transportation. The toll of deaths, injuries, and property damage is minimized by a highly sophisticated and detailed regulatory scheme administered by Federal and State authorities. The regulatory scheme includes regulations governing the packaging, marking, labeling, loading, storage, transportation documentation, placarding, and handling of hazardous materials in package and bulk form. The intent of the requirements is to protect workers, emergency response personnel, and the public from the harmful effects of unintentional releases of hazardous materials.

It is estimated that in excess of 4 billion tons of hazardous materials move annually in highway transportation, involving some 351,000 placarded vehicles which travel over 5 billion

miles each year.² Generally, an aggregate total of hazardous materials in excess of 1,000 pounds must be transported before placarding is required. However, certain hazard classes, namely, Class A explosives, Class B explosives, Poison A materials, Flammable solids which are water reactive, and Radioactive materials (hereafter referred to as Table 1 materials), are required by 49 CFR 172.504 to be placarded regardless of the amount being transported. In addition, whenever a cargo tank is used to transport hazardous materials, the cargo tank must remain placarded while both loaded and commercially empty, unless the tank has been thoroughly cleaned of H/M residue or has been reloaded with a nonhazardous material.

A primary catalyst for this rulemaking action is the recognition of the potential catastrophic results of an accident involving these materials. Due to the fact that the actions and capabilities of the driver greatly impact safe transportation, the FHWA believes that it should also consider imposing additional driver qualification requirements for operators of commercial motor vehicles used to transport these materials. We discuss these proposed changes in the paragraphs which follow.

Driver's Driving Record

During the period 1972 through 1979, the National Transportation Safety Board (NTSB) conducted 44 accident investigations which involved commercial motor vehicles. While investigating these accidents, NTSB made inquiries relative to the 44 commercial vehicle drivers' driving records. "When the responses to these inquiries were compiled, the composite records of the 44 drivers listed a total of 63 driver licenses, 98 license suspensions, 60 previous accidents, and 456 traffic convictions."³ The most

common traffic conviction (more than 60 percent of the total convictions) was for speeding.

It is a well known "secret" that many drivers of commercial motor vehicles obtain driver's licenses from several States so that they do not accumulate an excessive number of traffic convictions on a single license. By holding several licenses, the driver can average out traffic violations among those licenses, keeping one relative clear. Since it is difficult to detect when a driver is holding multiple driver's licenses, the effect of holding multiple licenses is to prohibit the motor carrier or law enforcement agencies from fully evaluating the individual's driving record. A study by the National Highway Traffic Safety Administration in cooperation with the American Association of Motor Vehicle Administrators intitled "Multiple Licensing and Interstate Truck Drivers" reached a similar conclusion.⁴ This is contrary to "the one license concept, [which] is based upon the philosophy that driver licenses issued by the States do not constitute separate privileges to drive; rather, each individual has a single, nationwide driving privilege which may be certified by any State by issuing a driver license."⁵

In a 1983 review of the transportation of H/M by highway, NTSB compiled the results of investigations of 15 accidents which had occurred since 1972, involving trucks transporting hazardous materials in bulk, where truck driver error or deficiency was a causal factor.⁶ These accidents involved vehicle overturns, jackknives, and collisions with trains, and collectively resulted in 61 fatalities and 283 injuries. Most of the fatalities and injuries were caused by the release of the hazardous materials being transported. Although records were not available for all of the involved drivers, a review of the records located by NTSB disclosed 11 driver's license suspensions, 19 previous accidents, and 83 previous traffic convictions among the 15 drivers.

² U.S. Department of Transportation, Research and Special Programs Administration, *Truck Transportation of Hazardous Materials: A National Overview*, by Domenic J. Maio, Staff Study SS-42-U1.1-10.1, Transportation Systems Center, Cambridge, MA, May 1984. This study is available for public inspection and copying from the BMCS Docket Files.

³ National Transportation Safety Board, Office of Evaluations and Safety Objectives, *Safety Effectiveness Evaluation of Detection and Control of Unsafe Interstate Commercial Drivers Through the National Driver Register, State Driver Licensing Policies, and the Federal Motor Carrier Safety Regulations*, Report No. NTSBEE801, February 15, 1980, p. 18.

⁴ National Highway Traffic Safety Administration in cooperation with American Association of Motor Vehicle Administrators, *Multiple Licensing and Interstate Truck Drivers*, DOT-HS-805-645, January 1981.

⁵ *Safety Effectiveness Evaluation of Detection and Control of Unsafe Interstate Commercial Drivers Through the National Driver Register, State Driver Licensing Policies, and the Federal Motor Carrier Safety Regulations*, p.5.

⁶ National Transportation Safety Board, *Recommendations H-83-30 through 34*, July 8, 1983. Available for inspection and copying from the BMCS Docket Files or by contacting the NTSB, Public Inquiries, Room 805F, 800 Independence Avenue, SW., Washington, DC 20594, (202) 382-6742.

¹ Hazardous Materials Transportation Act of 1974, 49 U.S.C. 1803.

The FHWA believes that restricting commercial motor vehicle drivers to one driver's license is central to the detection and control of problem drivers. Further, we believe that the motivation for a driver obtaining multiple driver's licenses is to circumvent the primary reason for requiring a driver's license, that is, to insure that only qualified individuals are operating motor vehicles on this Nation's highways. Based on the foregoing, the FHWA is proposing to prohibit a driver, operating a commercial motor vehicle used to transport Table 1 hazardous materials or operating a cargo tank commercial motor vehicle which must be placarded, from having more than a single operator's or chauffeur's license. That license must be issued by the driver's legal State of domicile. By State of domicile, we mean a "single" State of legal residence. An exception will be made for those instances where State law requires a driver to obtain an additional license for occupational purposes. In such cases, the driver may obtain a license from both the legal State of domicile and the State that requires a license for occupational purposes. As examples of this, we are aware that the States of Oklahoma and Montana require non-resident employees to obtain a license from one of those States before the individual accepts employment from a motor carrier domiciled in one of those States. We assume that in most, though not all instances, the State of domicile and the State requiring the license are the same, and therefore, it is assumed that the effect of the proposal would not undercut a single license concept. Commenters should address this problem and discuss whether it is likely to minimize multiple licensing.

As a point of clarification, the proposal to prohibit a driver from possessing more than a single operator's or chauffeur's license effectively prohibits a motor carrier from hiring a driver who holds more than a single license.

Prohibiting a driver from having multiple driver's licenses will facilitate the motor carrier's ability to obtain a complete motor vehicle record from the driver's State of domicile. In those limited instances where a State requires nonresident drivers, working for motor carriers domiciled in that State, to obtain an additional license from that State, the motor carrier will know that it must also contact this additional State in order to obtain a complete driving record.

This complete motor vehicle record (commonly called the Department of Motor Vehicle or DMV report) can become a valuable tool for the motor carrier at the time of the driver's original employment by the motor carrier. Armed with a complete record of driving violations, motor carriers will be better able to evaluate whether the driver should be hired and permitted to operate a commercial motor vehicle used to transport Table 1 hazardous materials or operate a cargo tank commercial motor vehicle which must be placarded.

The National Driver Register is another source of information which could lead to discovery of a multi-State licensed driver. The States that contribute to this database could serve as a resource to learn which drivers are actually on record as possessing more than one license to operate a commercial motor vehicle. Commenters should also address other suggestions for enforcing the proposed single license requirement.

Given our previous discussion concerning the motivation for holding multiple driver's licenses and given the fact that this permits individuals, who would otherwise have had their privilege to drive suspended by the State of domicile, to endanger the motoring public by continuing to operate a commercial motor vehicle on this Nation's highways, the FHWA believes strong corrective measures must be taken. Therefore, the FHWA proposes that drivers permitted to operate a commercial motor vehicle used to transport Table 1 hazardous materials or operate a cargo tank commercial motor vehicle which must be placarded, and found holding licenses in more than one State, unless required by a State for occupational driving, be disqualified from operating those commercial motor vehicles for 1 year. Subsequent offenses within a 3-year period would result in disqualification for 3 years. Comments concerning these proposals are requested.

Due to the nature of the commodities these drivers will be transporting, the FHWA believes that a higher level of vigilance is required of both the driver and motor carrier. Consequently, the FHWA is also proposing to require motor carriers to annually obtain a current copy of the driver's DMV report, for each driver that operates a commercial motor vehicle used to transport Table 1 hazardous materials or operates a cargo tank commercial motor vehicle which must be placarded. An annual DMV check of these drivers will yield valuable data concerning the

drivers' recent driving records, such as moving violations, speeding, failure to report accidents or even driver license restrictions or revocations. This data will permit the motor carrier to monitor, in a positive, ongoing fashion, the driving practices of the drivers it employs to transport the most dangerous classes of hazardous materials. Comments concerning this annual DMV check for drivers who will be operating commercial motor vehicles requiring placarding are requested. Comments are also requested on whether this proposed DMV check should be made binding.

Driver's Age

The FHWA requests public comment concerning the minimum age which should be required for a driver who will operate a commercial motor vehicle used to transport Table 1 hazardous materials or who will operate a cargo tank commercial motor vehicle which must be placarded. We are concerned that the operation of vehicles laden with these materials may require individuals with a maturity level more advanced than the typical driver.

Statistical data show that there is a high correlation between accidents and being under the age of twenty five. Young males between 15 and 25 years of age have been shown to have a death rate from motor vehicle accidents which far exceeds that of any other age group.⁷ As a group, Eicher *et al.* found that while passenger car drivers under 25 are twice as likely to be involved in an accident as could be expected based on their proportional share of miles driven, drivers in this same group who operate trucks were about six times more likely to be involved in an accident than would be expected.⁸ Eicher concluded that "drivers of large trucks under age 25 exhibit much more of a safety problem than their counterpart passenger car driver." Eicher goes on to quote a study which points out that its survey⁹ indicated that drivers under the age of 25 drove at slightly higher speeds, misrepresented their (driver's) logs more frequently, drove beyond the 10 hour limit more often, and had more violations than middle-aged or older truck drivers." It appears then that

⁷ U.S. Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, *Minimum Age Requirements of the Federal Motor Carrier Safety Regulations*, April 1975.

⁸ U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics & Analysis, *Large Truck Accident Causation*, by J. P. Eicher, H. D. Robertson, and G. R. Toth, Report No. DOT-HS-806 300, July 1982, p. IV-9.

younger truck drivers seem to take more and graver risks than older drivers.

Hackman *et al.* determined that drivers under the age of 25 "were extremely overrepresented" in the accident samples studied.⁹ In fact, the accident experience for drivers in this age group were over 200 percent higher than would be expected.

Due to the nature of the commodities being transported, and the potential catastrophic consequences resulting from an accident involving hazardous materials, the FHWA is requesting comments on whether it should require drivers who operate a commercial motor vehicle used to transport Table 1 hazardous materials or who operate a cargo tank commercial motor vehicle which must be placarded, to be at least 25 years of age. Comments should discuss such an age requirement in light of the other stringent requirements proposed in this NPRM which all drivers will have to meet. Comments should also discuss whether prohibiting drivers under age 25 from operating such vehicles could impair the ability of hazardous materials trucking firms to train their drivers before they have developed poor driving habits on trucks subject to less stringent regulatory requirements. In addition, the next section addresses driver experience and commenters should consider both factors, i.e., age-experience.

Driver's Experience and Roadtest

Critical to the safe transportation of hazardous materials is the driver's familiarity with and training on the type of commercial motor vehicle to which the driver will be assigned. Numerous accidents, including one involving the overturn in Denver, Colorado, in August 1984 of a commercial motor vehicle which was loaded with Navy torpedoes, a Class A explosive, can be attributed to the driver's lack of familiarity with and training on the type of vehicle being operated.¹⁰

As a result of the Denver accident, on December 31, 1984, the Department of the Army's Military Traffic Management Command (MTMC) submitted a petition requesting rulemaking to strengthen the driver qualification requirements

presently contained in the FMCSR. Specifically, MTMC requested modifications with respect to driver experience. According to the MTMC proposal, higher levels of driver experience should be required, at a minimum, for individuals who operate commercial motor vehicles used to transport class A or B explosives, or class A or B poisons. The FHWA is incorporating the MTMC petition into this rulemaking.

During the 1983 NTSB study referred to above, NTSB also found that many of the drivers involved in the accidents analyzed had worked for their current motor carrier for less than 2 years.¹¹ A review of the FHWA accident data for 1981 indicates that 46.7 percent of all accidents, where hazardous materials were being transported, involved drivers who had been with their carrier 2 years or less.

In 1978 the FHWA completed a study entitled "Effect of Cargo Shifting on Vehicle Handling."¹² Building on this study, in 1981, the FHWA completed a study entitled "Computer Simulation of the Effect of Cargo Shifting on Articulated Vehicles Performing Braking and Cornering Maneuvers."¹³ Both studies concluded that cargo surge and sloshing in cargo tank vehicles have a deleterious effect on vehicle stability.

Vallette *et al.* in a 1981 study for FHWA, entitled "The Effect of Truck Size and Weight on Accident Experience and Traffic Operations, Volume 3: Accident Experience of Large Trucks," found that cargo tank commercial motor vehicles transporting liquid bulk materials have high accident rates.¹⁴

A study conducted by the California Highway Patrol in 1981 indicated that cargo tank commercial motor vehicles are frequently involved in overturn

accidents.¹⁵ In this study, it was found that the proportion of overturn accidents for cargo tank commercial motor vehicles was three times that recorded for all other trucks in fatal and injury accidents. The study also concluded that "empty tank trucks were the most stable against overturns, followed by fully loaded trucks. The least stable were partially loaded vehicles."

Consequently, the FHWA is proposing additional requirements in this area in order to ensure that each individual has been fully evaluated, in terms of his/her ability to safely operate a vehicle, by the employing motor carrier, prior to the carrier's permitting that individual to drive a commercial motor vehicle used to transport Table 1 hazardous materials or to operate a cargo tank commercial motor vehicle which must be placarded. The additional requirements being proposed include the requirement that the prospective driver have 1 year experience operating a motor vehicle of a type similar to that which the driver will be assigned by the motor carrier. For example, if the driver will be used to operate a cargo tank straight truck requiring placards, the driver must have previously had 1 year experience operating a straight truck. Similarly, if the driver will be used to operate a cargo tank tractor semi-trailer requiring placards, the driver must have previously had 1 year experience operating a tractor semi-trailer.

This proposed requirement of prior experience with similar equipment would be a one-time requirement only. Once a driver has obtained the required 1-year experience operating such vehicles, this requirement will be considered satisfied for the remainder of the driver's driving career. With regard to the proposal, the FHWA requests comments on how to measure the 1-year experience for drivers that operate different vehicles over the course of the year. Commenters are asked to address how to apply this provision to drivers that currently transport hazardous materials but have not had 1-year previous driving experience.

It is an accepted practice in some European countries to train commercial drivers in an apprentice program, at various tasks, for a period lasting from 6 months to 3 years before permitting the person to operate the vehicle alone. Drivers under the age of 25 appear to pose a higher risk according to studies completed on the subject, although it is

¹¹ NTSB Recommendations.

¹² U.S. Department of Transportation, Federal Highway Administration, Offices of Research and Development, *Effect of Cargo Shifting on Vehicle Handling*, by C. Culley, R. L. Anderson, and L. E. Wesson, Report No. FHWA-RD-78-76, March 1978.

¹³ U.S. Department of Transportation, Federal Highway Administration, Offices of Research and Development, *Computer Simulation of the Effect of Cargo Shifting on Articulated Vehicles Performing Braking and Cornering Maneuvers*, by P. F. Bohn, M. C. Butler, H. D. Dunkle, and R. L. Eshleman, of the Johns Hopkins University/Applied Physics Laboratory, Report No. FHWA-RD-80-142, May 1981.

¹⁴ U.S. Department of Transportation, Federal Highway Administration, Offices of Research and Development, *The Effect of Truck Size and Weight on Accident Experience and Traffic Operations, Volume 3: Accident Experience of Large Trucks*, by Gerald R. Vallette, Hugh McGee, James H. Sanders, and Deborah J. Enger, of BioTechnology, Inc., Report No. FHWA-RD-80-137, July 1981.

¹⁵ California Highway Patrol, Enforcement Services Division, *California Tank Truck Accident Survey*, by W. M. Heath, Chief Engineer, December 1981.

⁹ U.S. Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, *Analysis of Accident Data and Hours of Service of Interstate Commercial Motor Vehicle Drivers*, by Kenneth D. Hackman, Emilie E. Larson, and Allen E. Shinder, of Genasys Corporation, One Central Plaza, 11300 Rockville Pike, Rockville, MD.

¹⁰ U.S. Department of Defense, *DOD Report on Motor Vehicle Accident Involving Transport of Navy MK 48 MOD 4 Torpedoes, Denver, Colorado, 1 August 1984*, by Peter J. Rutledge, Technical Advisor to the Director of Army Safety, November 20, 1984, p. 14.

not clear if that risk is higher because of a lack of maturity or experience or other factors. While BMCS today proposes to restrict from driving those drivers with less than 1 year experience, it is possible that the European apprentice program could be better or more effective, although it is more restrictive. This decision could be left up to the affected industry and we are, therefore, requesting comments on this approach. We also request comments on whether 2 or 3 years or more truck driving experience should be required before permitting a driver to drive a commercial vehicle laden with Table 1 hazardous materials or a cargo tank motor vehicle.

Further, the FHWA proposes that, if the prospective driver will be operating a cargo tank (including a portable tank) commercial motor vehicle for the motor carrier: (1) The prospective driver must be given a road test using a cargo tank vehicle loaded approximately 1/2 full, and (2) the road test procedure must include the evaluation of the driver's knowledge of the ability to operate the cargo tank controls and emergency equipment on the type vehicle the motor carrier intends to assign the driver to operate. We are proposing to require the cargo tank vehicle to be loaded approximately 1/2 full, to permit evaluation of the driver's ability to adjust for cargo surge and sloshing. This road test requirement is in addition to the minimum requirements applicable to the typical commercial motor vehicle driver.

By proposing changes to the driver's skill requirements, the FHWA recognizes that the evaluation of a driver's capability to safely operate a commercial motor vehicle transporting hazardous materials, is an on-going process. Section 391.33 provides an exception from the road test requirement. This exception permits drivers to substitute a license or certificate issued to that driver pursuant to Section 391.31 within the preceding 3 years for a road test as equivalent thereto. To enhance the evaluation of the skill of drivers who will be assigned to operate commercial motor vehicles used to transport Table 1 hazardous materials or to operate cargo tank commercial motor vehicles which must be placarded, the FHWA is proposing to deny such drivers the alternative of substituting these licenses or certificates for the road test. This modification will require each driver of a commercial motor vehicle used to transport Table 1 hazardous materials or operate a cargo tank commercial motor vehicle which must be placarded, to have his/her

driving skills evaluated by the motor carrier during a road test prior to being employed as a driver of such a vehicle. As stated above, this proposed requirement is in addition to the current regulation which call for road testing subject to certain exceptions. Comments concerning these driver's road test proposals are requested.

The FHWA intends to propose in a separate rulemaking to amend the accident report form (MCS 50-T) required to be completed by motor carriers when their vehicles are involved in reportable accidents. Part 394 of the Federal Motor Carrier Safety Regulations, requires motor carriers to file these reports with the FHWA. The FHWA is considering amending this form to require a motor carrier which is involved in an accident to supply additional information to the FHWA. This information could, among other things, include the driver's prior experience driving in the type vehicle involved in the accident.

Knowledge of the Hazardous Materials Regulations

Upon leaving a shipper's facility or a motor carrier's terminal, a driver operating a commercial motor vehicle laden with hazardous materials is, for all intents and purposes, on his/her own. In the event of an accident involving that motor vehicle, a driver having certain knowledge of the hazardous materials being transported can greatly assist emergency response personnel and can mitigate potential catastrophic occurrences. Further, basic knowledge of the hazardous materials requirements can help keep accidents and incidents from occurring. With this in mind, the FHWA proposes to require a driver, who will be operating a commercial motor vehicle used to transport Table 1 hazardous materials or operating a cargo tank commercial motor vehicle which must be placarded, to receive certain basic hazardous material training. We believe that the driver must have a functional knowledge of the Hazardous Materials Regulations addressing: (1) Shipping papers, (2) package marking requirements, (3) package labeling, (4) packaging requirements, (5) commercial motor vehicle placarding, and (6) the loading and storage of H/M. Further, the driver must have a functional knowledge of the requirements contained in Part 397 of the FMCSR pertaining to: (1) Vehicle attendance, (2) vehicle parking, (3) route selection, and (4) smoking by the driver.

Individuals who will be operating cargo tank commercial motor vehicles required to be placarded in accordance

with § 177.823 of this title must, in addition to the training described above, be trained in the: (1) Operation of the emergency control features of the cargo tank, (2) operation of the emergency equipment required by § 393.95; and (3) proper loading and unloading of the cargo tank, including the vehicle attendance requirements.

The FHWA believes a driver who is knowledgeable in these areas can help to insure that shipping papers are properly prepared and that hazardous materials packages carried on the vehicle are in fact listed on the shipping papers. Such a trained driver can also identify improper packaging and labeling during the loading process and insure that the vehicle is properly placarded for the hazardous materials classes being transported. This functional knowledge will provide an additional measure of safety to highway transportation. Comments concerning this hazardous materials training proposal are requested.

Driver Disqualification

As stated in the DRIVER'S DRIVING RECORD section, we propose to disqualify any driver operating a commercial motor vehicle used to transport Table 1 hazardous materials or operating a cargo tank commercial motor vehicle which must be placarded for a period of one year, if the driver is found to possess more than one driver's license. Provision has been made for those limited instances where an additional license is required by State statute for occupational driving. Subsequent offenses would result in disqualification for 3 years.

Comments concerning this proposal are requested. Comments to extend such a requirement to all commercial motor vehicle drivers will also be considered.

Due to the potential catastrophic result of an accident involving the transportation by highway of Table 1 hazardous materials or a cargo tank commercial motor vehicle which must be placarded, the FHWA believes that the penalties associated with criminal misconduct while operating a commercial motor vehicle should reflect the seriousness of the offense. Consequently, when a driver is convicted of, or forfeits bond or collateral upon a charge of, a disqualifying offense listed in § 391.15(c) of the FMCSR (e.g., driving under the influence of alcohol, a narcotic drug, or a derivative of a narcotic drug; knowing transportation, possession or use of amphetamines, drugs or their derivatives; leaving the scene of an accident which resulted in injury or

death; or commission of a felony involving the use of a commercial vehicle), the FHWA proposes to disqualify that individual from operation of a commercial motor vehicle transporting Table 1 H/M or a cargo tank commercial motor vehicle for a period of 3 years. Under this proposal, subsequent convictions or forfeitures within 3 years of the date of the return of the driver's driving privilege would result in that individual being disqualified from operation of a commercial motor vehicle transporting Table 1 H/M or a cargo tank commercial motor vehicle for an additional period of 5 years.

Physical Qualifications and Examinations

On November 5, 1984, the FHWA published a final rule in the *Federal Register* (49 FR 44210) which amended the FMCSR to incorporate in the driver qualification requirements prohibitions in the transportation, possession, and use of drugs and other substances listed in Schedule I of the Drug Enforcement Administration's Schedules of Controlled Substances (SCS). There are approximately 100 drugs and other substances in Schedule I of the SCS. The action was taken because these substances degrade driving skills.

The final rule provided an in-depth analysis of marijuana and its effects upon highway safety. Marijuana was chosen for discussion because: (1) Its effects are considered to be intermediate for those drugs and other substances found in Schedule I and (2) its incidence of usage, among Schedule I drugs, is probably the highest.

There has been a steady and dramatic increase in the use of marijuana during the last twenty years. In 1980, it was estimated that 16 million persons smoked marijuana monthly.¹⁶

Klein *et al.* studied the effect of marijuana on experienced users.¹⁷ Klein's road test with drivers using high dosages of marijuana indicated dangerous effects on driving performance, including a sensory illusion of roadway inversion. It should be noted that the effect of alcohol is primarily depression of the senses, whereas the effect of marijuana is both

hallucinatory and/or depression of the senses.

In 1977, Milner drew together twenty-two scientifically valid reports on marijuana and driving hazards.¹⁸ His research indicated that marijuana is positively associated with roadway fatalities. Controlled laboratory studies showed marijuana to adversely affect perception skills, coordination, braking time, and other motor skills, mood, and judgment. Milner's study showed that marijuana adversely affected driving safety in controlled areas (closed driving courses) and in an ordinary traffic setting.

Lee I. Dogoloff, in an article in the "Journal of Traffic Safety Education," stated that it has been shown in laboratory and field experiments that marijuana, at typical levels, impairs driving skills.¹⁹ Dogoloff cited numerous studies in which traces of marijuana were detected in autopsies of drivers who had died in automobile crashes. While such traces do not necessarily indicate impairment, the presence of marijuana in automobile accidents ranged from 9-31 percent. There was no truck data used in the Dogoloff article.

The Greyhound Lines, Inc., has given, as part of pre-employment physical examination, urine drug screening tests. In November 1983, Greyhound experienced a work stoppage. As a result of the work stoppage, it attempted to hire replacement drivers. Greyhound accepted applications from individuals that were experienced intercity bus drivers. Greyhound reports that 30 percent of the applicant's urine samples were positive for marijuana. These positive tests were confirmed with a second test using a different methodology.

In a related action, on August 2, 1985, the Federal Railroad Administration published a final rule in the *Federal Register* (50 FR 31508) which deals with the control of alcohol and drug use in railroad operations. The new regulation prohibits on-duty use of alcohol and drugs by railroad employees, mandates drug and alcohol testing for employees involved in major accidents, authorizes on-site testing of employees suspected of impairment, and requires pre-employment drug screening.

Additionally, attention is directed to a final rule which is to be found elsewhere in this *Federal Register* issue, which amends the FMCSR by revising the prohibitive language of the nonalcoholic drug medical standard for interstate or

foreign commerce drivers. The revision provides that the use of certain nonalcoholic drugs renders a person not qualified to drive, whereas the previous rule provided that a person with a current clinical diagnosis of drug dependence would not be qualified to drive. The change was made because the old language could allow known drug users to continue to drive commercial motor vehicles in spite of the knowledge of their drug use.

Previously, § 391.41 of the FMCSR prohibited a driver from being medically certified to operate a commercial motor vehicle if the driver: (1) Had a current clinical diagnosis of dependence on a Schedule I drug, an amphetamine, a narcotic, or any other habit-forming drug, and/or (2) had a current clinical diagnosis of alcoholism. Section 392.4 of the FMCSR prohibits a driver from being on duty and possessing, being under the influence of, or using: (1) A Schedule I drug or other substance, (2) a narcotic drug or any formulation thereof, (3) an amphetamine or any formulation thereof (including, but not limited to, "pep pills" and "bennies"), or (4) any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle. Further, § 392.5 prohibits a driver from consuming or being under the influence of an intoxicating beverage while in an on-duty status or within 4 hours before reporting for duty.

Although these regulatory requirements were intended to eliminate or at least reduce the number of instances of drug and alcohol use during commercial motor vehicle driving, it is possible that many drivers are presently using these substances while operating commercial motor vehicles. Based on the experience of its field staff in regulating the motor carrier industry, the FHWA believes that current usage of substances, such as amphetamines, is related to the driver's desire to increase the length of time the driver is able to perform the driving task.

A 1982 technical report prepared for the National Highway Traffic Safety Administration (NHTSA) cites statistics on alcohol usage in fatal accidents involving trucks with a gross weight rating over 10,000 pounds. These data showed that 18.8 percent of the fatally injured drivers who were tested for blood alcohol content showed a concentration of .05 or greater. Similarly, 14.4 percent of those fatally injured drivers tested for blood alcohol content showed .10 alcohol concentration or greater.

These data, when matched to the task of operating a commercial motor vehicle laden with the most dangerous classes

¹⁶ Lee I. Dogoloff, "Marijuana and Driving," *Journal of Traffic Safety Education*, (October 1980): 8-10.

¹⁷ Arnold W. Klein, Joseph H. Davis, and Brian D. Blackbourne, "Marijuana and Automobile Crashes," paper presented at Third Annual Meeting of the American Academy of Clinical Toxicology, San Francisco, CA, October 26, 1970. Available for inspection and copying from the BMCS Docket Files.

¹⁸ Gerald Milner, "Marijuana and Driving Hazards," *The Medical Journal of Australia*, (February 12, 1977): 208-210.

¹⁹ Dogoloff, p. 8.

of hazardous materials, indicate that FHWA action may be necessary. This is especially true when one considers the fact that the typical commercial vehicle driver drives tens of thousands of miles annually, operates a motor vehicle which may weigh 80,000 pounds, and is employed in a high stress occupation. The FHWA is considering either recommending or requiring such drivers to be tested for the presence of alcohol or certain drugs which are believed to interfere with a driver's ability to safely drive a commercial motor vehicle. This testing would be accomplished through an analysis of a urine sample of the driver. Regulatory language for both alternatives is included and persons should comment if either of these alternatives should be made final. Those persons who favor making this a requirement should provide data on the costs and benefits of such a requirement. The FHWA notes that companies increasingly have been voluntarily adopting drug urinalysis screening and we would expect this trend to continue absent a Federal requirement. Commenters supporting a Federal requirement, therefore, should explain why they believe it is necessary to have a mandated requirement.

At the present time, however, the FHWA does not have sufficient data which would permit a comprehensive evaluation of the costs and benefits related to a urinalysis requirement. In the railroad industry, a well documented study showed that on-the-job alcohol use by employees in the operating crafts was prevalent. A number of serious railroad accidents were also known to have occurred that involved drunken employees. Consequently, the FHWA requests data which will provide a basis for evaluating the costs and benefits of such a requirement for the hazardous material trucking industry.

Drivers and driver applicants would be provided 30 days advance notice of the testing (5 days for preemployment testing). Urine samples which are found to be positive for any of the substances listed would be subject to a second, confirmatory test.

Drivers whose urine sample tested positive for the presence of any prohibited drug would be disqualified from driving certain hazardous materials laden vehicles. In this regard it should also be remembered that the FHWA has adopted a rule to disqualify a driver who uses certain drugs. Accordingly, if a urine sample of any driver seeking to drive a hazardous material laden vehicle tested positive for any drug referred to in 49 CFR 391.41(b)(12), that driver would also be disqualified from driving

non-hazardous material laden vehicles as well. Disqualifications under 49 CFR 391.41(b)(12) or (c) would last until such time as the driver was able to demonstrate that the driver was no longer using a controlled substance by presenting a "clean" urine sample.

Section 391.41(b)(13) states that a driver is disqualified if the driver has a current clinical diagnosis of alcoholism. Section 392.5 of the Department's regulations prohibits the use or possession of intoxicating beverages by a driver while on duty, or being on duty while under the influence of an intoxicating beverage, or consuming an intoxicating beverage within 4 hours of going on duty. Because of the prevalence of alcohol use in our society, and because an individual can consume an alcoholic beverage while off duty and, though not under the influence, some time later present a urine sample in which the presence of alcohol can be detected, the FHWA is not proposing that the discovery of the presence of alcohol in the urine, alone, result in the disqualification of the driver or driver applicant. Rather, the FHWA proposes to require that an individual with such a positive urine sample be further evaluated to determine whether that individual should be diagnosed as having alcoholism and thus disqualified.

The FHWA is not today proposing but is considering a requirement that motor carriers test a driver for the presence of the drugs listed above after a driver is involved in a reportable accident, and that the results of the test be indicated in the "remarks" section of the accident report when it is submitted to FHWA. We believe, however, that post-accident drug testing may prove useful in identifying problems and measures to correct them. At this time, we do not have sufficient data upon which to evaluate the potential benefits and costs associated with such a requirement. Comments and information on this issue are requested.

Other Changes

Readers of this document should note that the term "commercial motor vehicle" is used throughout the proposed regulations rather than the term "motor vehicle". This is in keeping with section 204 of the Act where the term "commercial motor vehicle" is defined. The FHWA intends to amend Part 391 of the FMCSR at the Final Rule stage to substitute the term "motor vehicle" with the term "commercial motor vehicle".

Importance of Public Comments

The successful completion of this rulemaking effort requires the receipt of diverse viewpoints and supporting data

to this public docket. The FHWA seeks detailed answers to the requests for information. Failure to provide complete data may not permit the FHWA to adequately consider the merits of an interested party's position. Information which provides a rationale for a particular position on a question is very important, as is data which estimates the cost impacts and benefits of the action under consideration.

Economic Impact Evaluation

Because the impact of this proposal will not result in an annual effect on the economy of \$100 million, a major increase in costs or prices, or significant adverse effects on the American economy, the FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. A draft regulatory evaluation has been prepared and is available for review in the public docket.

Based on the information available to the FHWA at this time, the action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 391

Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Driver qualifications.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: May 7, 1986.

Kenneth L. Pierson,

*Director, Bureau of Motor Carrier Safety,
Federal Highway Administration.*

In consideration of the foregoing, the Federal Highway Administration proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, by amending Part 391 as set forth below.

PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]

1. The authority citation for Part 391 is amended to read as follows:

Authority: Section 206 of Pub. L. 96-554, October 30, 1984, 98 Stat. 2839 (49 U.S.C. App. 2505); 49 U.S.C. 3102; 49 U.S.C. 104; 23 U.S.C. 315; 49 CFR 1.48 and 301.60.

2. Part 391, Subpart B is amended by revising §§ 391.11(a) and the introductory text of (b) and 391.15(c)(3), and adding §§ 391.11(c) and 391.15(d) to read as follows:

§ 391.11 Qualifications of drivers.

(a) A person shall not drive a motor vehicle unless that person is qualified to drive a commercial motor carrier. Except as provided in § 391.63, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle. It shall be the responsibility of the motor carrier to provide evidence that each driver has fulfilled each of the qualification requirements set forth in this section.

(b) Except as provided in paragraph (c) of this section and Subpart G of this part, a person is qualified to drive a commercial motor vehicle if that person—

(c) A person is qualified to drive a commercial motor vehicle which is used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title if that person—

- (1) Is at least 21 years of age;
- (2) Can read and speak the English language sufficiently to converse with the general public, to understand the highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;
- (3) Can, by reason of at least 1 year's experience operating the type of commercial motor vehicle to which that person will be assigned, safely operate the commercial motor vehicle;
- (4) Can, by reason of experience, training, or both, determine whether the cargo to be transported has been properly located, distributed, and secured in or on the commercial motor vehicle being driven;
- (5) Is familiar with methods and procedures for securing cargo in or on the commercial motor vehicle being driven;
- (6) Is physically qualified to drive a commercial motor vehicle in accordance with Subpart E—Physical Qualifications and Examinations of this part;
- (7) Has been issued a currently valid commercial motor vehicle operator's or chauffeur's license or permit by the individual's State of legal domicile;
- (8) Does not hold more than one currently valid commercial motor vehicle operator's or chauffeur's license or other permit, unless required by State law for occupational driving;
- (9) Has prepared and furnished the motor carrier that employs that person

with the list of violations or the certificate as required by § 391.27;

(10) Is not disqualified to drive a commercial motor vehicle under the rules in § 391.15;

(11) Has successfully completed a driver's road test given by the motor carrier employing that person and has been issued a certificate of driver's road test in accordance with § 391.31;

(12) Has successfully completed a written examination given by the motor carrier employing that person and has been issued a certificate of written examination in accordance with § 391.35;

(13) Has successfully completed the hazardous materials training required by § 391.39; and

(14) Has completed and furnished the motor carrier that employs that person with an application for employment in accordance with § 391.21.

§ 391.15 Disqualification of drivers.

(c) * * *

(3) Duration of disqualification for criminal misconduct

(i) *First offenders.* A driver is disqualified from driving in interstate and foreign commerce for 1 year, and from driving any vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle which is required to be placarded in accordance with § 177.823 of this title for 3 years, after the date of conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, the driver was not convicted of, and did not forfeit bond or collateral upon a charge of, an offense that would disqualify the driver under the rules of this section.

(ii) *Subsequent offenders.* A driver is disqualified from driving in interstate and foreign commerce for 3 years, and from driving any vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle which is required to be placarded in accordance with § 177.823 of this title for 5 years, after the date of conviction or forfeiture of bond or collateral if, during that 3 years preceding the date, the driver was convicted of, or forfeited bond or collateral upon a charge of, an offense that would disqualify the driver under the rules of paragraph (c) of this section.

(iii) A driver that has been disqualified under the terms of this paragraph on the effective date of this regulation, may be employed to operate a commercial motor vehicle used to transport hazardous materials of a class

listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title, following the completion of the 1 year or 3 year disqualification periods, whichever is applicable, as set forth in paragraph (c)(3) of this section.

(d) Disqualification for possession of multiple driver's licenses.

(1) *General rule.* A driver of a commercial motor vehicle which is used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title, who is found to be in possession of a driver's license other than a license issued by the driver's State of domicile, is disqualified for the period of time specified in paragraph (d)(2) of this section, unless the additional driver's license is required by State law for occupational driving.

(2) Duration of disqualification for possession of multiple driver's licenses—

(i) *First offenders.* A driver is disqualified from further operation of a commercial motor vehicle which is used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title for 1 year after the date the driver is found to be in possession of a driver's license other than a license issued by the State of legal domicile.

(ii) *Subsequent offenders.* A driver is disqualified from further operation of a commercial motor vehicle which is used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title for 3 years after the date the driver is found to be in possession of a driver's license other than a license issued by the State of legal domicile if, during the 3 years preceding that date, the driver was disqualified under the rules of paragraph (d) of this section.

3. Part 391, Subpart C is amended by adding §§ 391.23(d) and 391.27(e) to read as follows:

§ 391.23 Investigations and inquiries.

(d) If, as the result of the inquiry to State agencies or the investigation of the driver's employment, it is determined that a person, who will be employed to

drive a commercial motor vehicle which will be used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title, holds a driver's license other than a license issued by the State of legal domicile, the driver is disqualified for the period of time specified in § 391.15(d)(2), unless the additional driver's license is required by State law for occupational driving.

§ 391.27 Record of violations.

(e) Each motor carrier shall obtain the information required by § 391.23(a)(1) at least once every 12 months for each driver it employs to drive a commercial motor vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title.

4. Part 391, Subpart D is amended by revising the heading of subpart D, adding §§ 391.33(a)(3) and 391.39 and revising the introductory text of § 391.31(c) to read as follows:

Subpart D—Training, Examinations and Tests

§ 391.31 Road test.

(c) The road test must be of sufficient duration to enable the person who conducts the road test to evaluate the skill of the person taking the test. The skills to be evaluated include the driving of the motor vehicle and operation of the motor vehicle's associated equipment. If the person will be employed to drive a cargo tank (including a portable tank) commercial motor vehicle which must be placarded in accordance with § 177.823 of this title, the cargo tank (or portable tank) must be loaded approximately ½ full during the road test. When fulfilling the ½-full loading requirement, hazardous materials need not be used. The person who takes the test must be tested while operating the type of motor vehicle the motor carrier intends to assign that person. As a minimum, the person must be tested on the performance of each of the following operations:

§ 391.33 Equivalent of road test.

(a) * * *

(3) *Exception.* A driver who will be employed to drive a commercial motor

vehicle which will be used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title may not present and the motor carrier may not accept the road test equivalents described in paragraphs (a) (1) and (2) of this section.

§ 391.39 Hazardous materials training.

(a) A person shall not operate a commercial motor vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title, unless that person has received hazardous materials training.

(b) The hazardous materials training required by paragraph (a) of this section shall consist of—

(1) Instruction concerning the required information which must be shown on the hazardous materials shipping paper and the location where such shipping papers shall be kept during the operation of the commercial motor vehicle;

(2) Instruction concerning the markings and labels which must be shown on packages of hazardous materials;

(3) Instruction concerning the identification of improper packaging for the transportation of hazardous materials;

(4) Instruction concerning the proper placarding of commercial motor vehicles;

(5) Instruction concerning the loading and storage requirements contained in § 177.848 of this title;

(6) Instruction concerning the requirements contained in Part 397 of this chapter, including, but not limited to, vehicle attendance, vehicle parking, route selection, and smoking by the driver; and

(7) Instruction concerning the procedures to be followed in the event of an accident or other emergency.

(c) A person operating a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title must, in addition to the training set forth in paragraph (b) of this section, also be trained in the—

(1) Operation of the emergency control features of the cargo tank;

(2) Operation of the emergency equipment required by § 393.95 of this chapter; and

(3) Proper loading and unloading of the cargo tank, including the vehicle attendance requirements.

5. Part 391, Subpart E, is amended by adding one of the two alternatives given in Alternatives 1 and 2 which read as shown below. (The two proposed texts are given for commenters to review.)

Alternative 1

§ 391.41 Physical qualifications for drivers—Alternative Number 1 (Requirement).

(c)(1) In addition to the requirements contained in paragraphs (a) and (b) of this section, a driver who operates a commercial motor vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title, or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title, shall not use a controlled substance as defined in 21 U.S.C. 802 including all substances listed in Schedules I through V of 21 CFR Part 1308, as they may be revised from time to time.

(2) *Exception.* This paragraph (c) does not prohibit the use, or possession incident to such use, of a controlled substance listed in Schedules II through V of the Schedules of Controlled Substances (21 CFR Part 1308) prescribed or authorized by a medical practitioner (physician or dentist) licensed or otherwise authorized to practice by the State, if the treating medical practitioner or a physician designated by the motor carrier has made a good faith judgment, with notice of the driver's assigned duties and on the basis of available medical history, that use of the substance by the driver at the prescribed or authorized dosage level is consistent with safe performance of the driver's duties, and the substance is used at the dosage prescribed or authorized.

(2)(i) A driver who operates a motor vehicle identified in paragraph (c) of this section shall be tested for the presence of alcohol and other drugs. The test shall be accomplished through analysis of a urine sample.

(ii) The employing motor carrier shall cause the driver's urine sample to be identified, preserved, and tested by a competent laboratory for the presence of drugs including, at a minimum, the following substances: alcohol, opiates (narcotics), cocaine, barbiturates, amphetamines, cannabis, and any other drug(s) identified by the medical authority conducting the test to be in frequent use in the locality.

(iii) The motor carrier shall give each employed driver 30 days notice in writing prior to testing. In the case of preemployment drug testing, a minimum of 5 days notice to the applicant is required.

(3) If the first test of a sample is positive for any drug listed in this section, the sample shall be tested a second time by another method, equal to or greater in sensitivity but greater in specificity than the first test, to confirm the finding.

(4) A person is not physically qualified under this section if the second test of the sample confirms the findings of the first test indicating the presence of any drug listed in this section except alcohol. If the second test confirms the finding of the first test that alcohol is present in the urine sample tested, then further medical investigation must take place to decide if a current clinical diagnosis of alcoholism is indicated. A person with a current clinical diagnosis of alcoholism is not physically qualified to drive a commercial motor vehicle under paragraph (b)(13) of this section.

(5) A driver or driver applicant who refuses to submit to drug testing under this section shall not be used as a driver during any period such refusal may continue.

Alternative 2

§ 391.41 Physical qualifications for drivers—Alternative Number 2 (Recommendation).

(c)(1) In addition to the requirements contained in paragraphs (a) and (b) of this section, a driver who operates a commercial motor vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title, or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title, shall not use a controlled substance as defined in 21 U.S.C. 802 including all substances listed in Schedules I through V of 21 CFR Part

1308, as they may be revised from time to time.

(2) *Exception.* This paragraph (c) does not prohibit the use, or possession incident to such use, of a controlled substance listed in Schedules II through V of the Schedules of Controlled Substances (21 CFR Part 1308) prescribed or authorized by a medical practitioner (physician or dentist) licensed or otherwise authorized to practice by the State, if the treating medical practitioner or a physician designated by the motor carrier has made a good faith judgment, with notice of the driver's assigned duties and on the basis of available medical history, that use of the substance by the driver at the prescribed or authorized dosage level is consistent with safe performance of the driver's duties, and the substance is used at the dosage prescribed or authorized.

(3)(i) It is recommended that a driver who operates a motor vehicle identified in paragraph (c) of this section should be tested for the presence of alcohol and other drugs. The test should be accomplished through analysis of a urine sample.

(ii) The employing motor carrier should cause the driver's urine sample to be identified, preserved, and tested by a competent laboratory for the presence of drugs including, at a minimum, the following substances: alcohol, opiates (narcotics), cocaine, barbiturates, amphetamines, cannabis, and any other drug(s) identified by the medical authority conducting the test to be in frequent use in the locality.

(iii) The motor carrier should give each employed driver 30 days notice in writing prior to testing. In the case of preemployment drug testing, a minimum of 5 days notice to the applicant should be required.

(4) If the first test of a sample is positive for any drug listed in this section, the sample should be tested a second time by another method, equal to or greater in sensitivity but greater in

specificity than the first test, to confirm the finding.

(5) A person should not be physically qualified under this section if the second test of the sample confirms the findings of the first test indicating the presence of any drug listed in this section except alcohol. If the second test confirms the finding of the first test that alcohol is present in the urine sample tested, then further medical investigation should take place to decide if a current clinical diagnosis of alcoholism is indicated. A person with a current clinical diagnosis of alcoholism may not be physically qualified to drive a commercial motor vehicle under paragraph (b)(13) of this section.

(6) A driver or driver applicant who refuses to submit to drug testing under this section should not be used as a driver during any period such refusal may continue.

6. Part 391, Subpart F, is amended by adding § 391.51(i) to read as follows:

* * * * *

§ 391.51 Driver qualification files.

* * * * *

(i) The qualification file for a driver who has been employed to operate a commercial motor vehicle used to transport hazardous materials of a class listed in § 172.504, Table 1, of this title or a cargo tank (including a portable tank) commercial motor vehicle required to be placarded in accordance with § 177.823 of this title must, in addition to the information required by paragraphs (b) and (c) of this section, include—

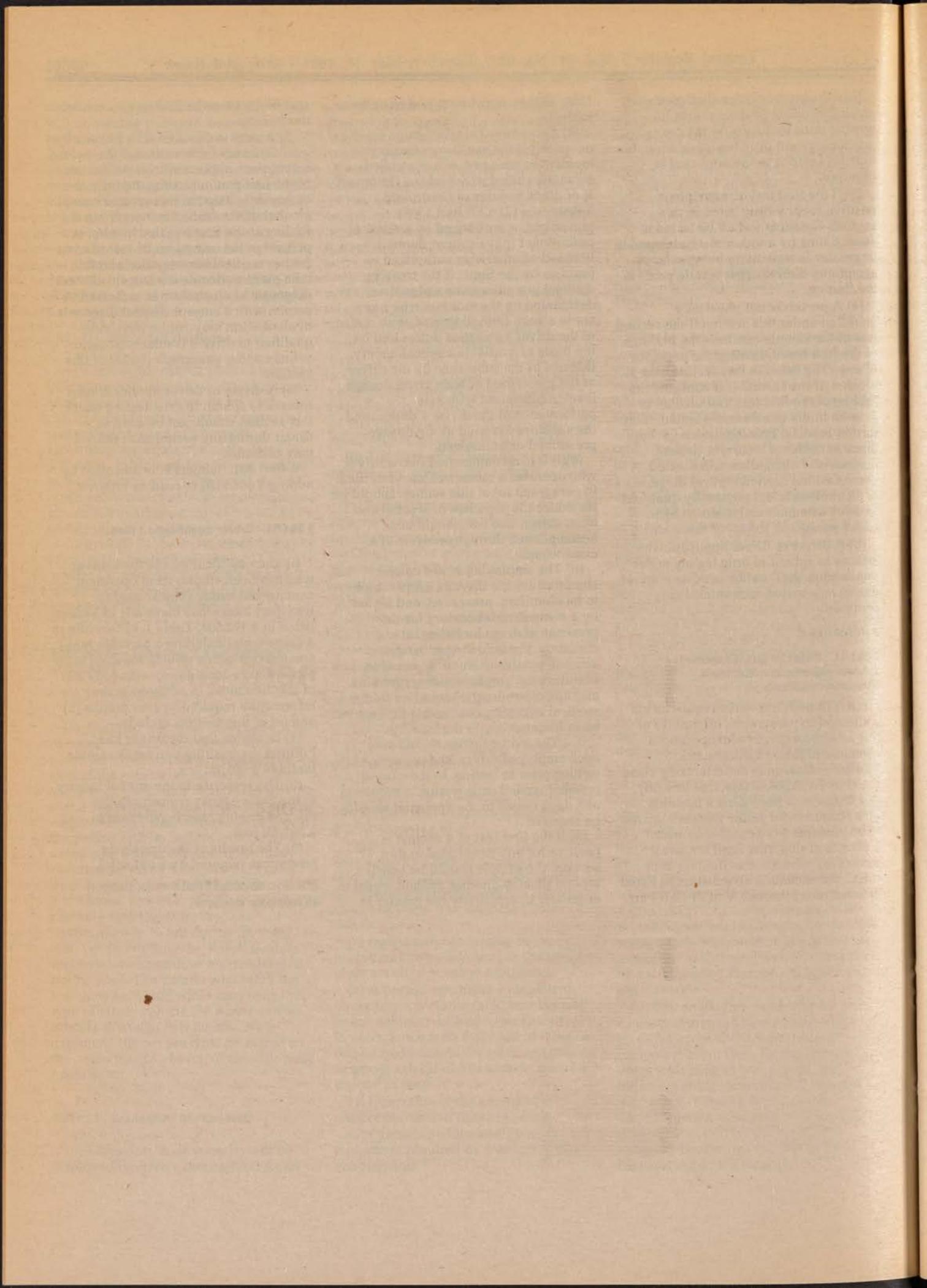
(1) Evidence that the driver has fulfilled the qualification requirements found in § 391.11;

(2) The response to the annual inquiry to the State agency concerning the driver's driving record, pursuant to § 391.23; and

(3) The results of the urinalysis screenings required by § 391.41(c).

[FR Doc. 86-10644 Filed 5-8-86; 1:10 pm]

BILLING CODE 4910-22-M



Federal Register

Tuesday
May 13, 1986

Part III

Department of Justice

Bureau of Justice Assistance

Criminal Justice Discretionary Grants;
Notice

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

Criminal Justice Discretionary Grants

AGENCY: Bureau of Justice Assistance, DOJ.

ACTION: Notice of Proposed Program Priorities.

SUMMARY: The Bureau of Justice Assistance is publishing for public comment a notice of proposed program priorities for criminal justice discretionary grant funding.

DATE: Comments are due on or before July 14, 1986.

ADDRESS: Send comments to Eugene Dzikiewicz, Acting Deputy Director, Bureau of Justice Assistance, 633 Indiana Avenue NW., Washington, DC 20531, (202) 272-6838.

FOR FURTHER INFORMATION CONTACT: Curtis Straub II, Bureau of Justice Assistance, 633 Indiana Avenue NW., Washington, DC 20531, (202) 272-6838.

SUPPLEMENTARY INFORMATION: On October 12, 1984, President Reagan signed into law the Justice Assistance Act of 1984. Part E of the Act establishes a program of criminal justice discretionary grants to public agencies and private non-profit organizations for the purposes of: (1) Demonstration programs; (2) education and training for criminal justice personnel; (3) technical assistance to states and local governments; and (4) national or multi-state programs.

The discretionary grant program is intended to complement and enhance the criminal justice block grant program authorized under Part D of the Act and to address criminal justice issues which are national or multi-state in scope. Block grants, administered by the states, provide funds to carry out state and local programs which offer a high probability of improving the criminal justice system, with special emphasis on violent crime and serious offenders. National/multi-state programs are designed to address issues of national concern and to provide leadership in criminal justice system improvement. For fiscal year 1986, the amount available for discretionary programs is \$11.6 million.

Responsibility for administering the discretionary grant program rests with the Bureau of Justice Assistance of the Office of Justice Programs. As required by the Act, the Bureau is announcing its proposed priorities for discretionary grants and inviting public comment. This notice was not released for public comment earlier this year pending

action on a proposed rescission of fiscal year 1986 funds. After the 60-day comment period has ended and the Bureau has considered all comments received, it will publish a final notice of its priorities in the **Federal Register** detailing specific programmatic and application requirements.

The proposed priorities for fiscal year 1986 reflect two broad themes: the first is to facilitate the successful implementation of the block grant program through the continued provision of training and technical assistance; and the second is to continue the emphasis on programs that deal with violent crimes, serious offenders, victims and crime prevention through demonstration and national priority programs.

The fiscal year 1985 priorities published in the **Federal Register** on July 26, 1985 (50 FR 30664 July 26, 1985) have been modified to reflect the following changes: a supplemental award to the Law Enforcement Accreditation Program; a broadening of the Evaluation Component for Demonstration Programs to include evaluation of selected block grant projects; and the cancellation of the announcement for Technical Assistance and Training to Crimes Against the Elderly and Rural Law Enforcement Programs because these proposed areas have not proven to be selected by the states for sufficient block grant funding.

A substantial amount of the funds provided for in this announcement will not be awarded until the 60-day period for public comment has expired and the final notice of program priorities has been published. However, some projects will be started or continued during this period. The Bureau is specifically inviting comment and recommendations regarding candidate programs, particularly in the area of violent crimes and serious offenders. The Bureau is seeking to identify promising strategies that lend themselves to additional field testing.

I. Demonstration

Demonstration programs provide a means for testing in a variety of sites, programs that, based on research or experience, are likely to be a success in more than one jurisdiction and are not likely to be funded with monies from other sources. All demonstration programs will be evaluated and applicants will be required to cooperate with the evaluation effort. Programs that prove successful may be approved by the Bureau as eligible for block grant support in future years.

The Bureau proposes to undertake demonstration programs in the following priority areas:

a. *TASC Criminal History Tracking.* This program will demonstrate the feasibility of developing linkages to state computerized criminal history repositories for measuring the effectiveness of TASC programs, by tracking clients over time. The program will address issues related to criminal history records access by non-criminal justice agencies, privacy and security, mechanisms for the linkages and data analysis.

b. *Organized Crime/Narcotics Trafficking.* This program would develop a coordinated investigative and prosecutorial effort among Federal, state and local agencies in jurisdictions with heavy organized crime or narcotics trafficking activity. The program is designed to reduce fragmented and duplicative efforts through an emphasis on shared management, data exchange during investigations and prosecution and training in the seizure of financial assets and civil remedies.

c. *Projects Based on NIJ Research.* Projects will be developed to demonstrate that new procedures or techniques, found by the National Institute of Justice through research and evaluation to be effective in one or a small number of locations, can be transferred to other jurisdictions. Specific programs to be implemented will be determined in cooperation with NIJ.

d. *Justice Simulation Modeling.* Justice Simulation Modeling (JUSSIM), which is a computer-aided model focusing on the flow of offenders through the criminal justice system, will be implemented in several jurisdictions. This program will demonstrate the model's ability to assist decision-makers anticipate the effects that changes in justice policy, workload and resources in one agency have on other criminal justice agencies.

e. *Information Systems Projects.* Several projects will be funded to demonstrate the effectiveness of management information systems in improving the operations of criminal justice agencies. Efforts will focus primarily on the use of personal computers by small to medium sized organizations.

f. *Family Violence Projects.* This program will continue the efforts of the family violence demonstration program implemented with FY 1984-85 funds. The goal of this program is to intervene in and reduce battering in adult relationships by instituting an effective law enforcement and criminal justice intervention program in domestic violence cases.

g. *Prison Capacity.* Demonstration programs will implement

recommendations of the Attorney General's Task Force on Violent Crime. These recommendations include greater uniformity and certainty in sentencing and development of mechanisms for determining prison policy.

The Bureau anticipates conducting each of these demonstration programs in several sites. It is estimated that \$3.8 million will be allocated for demonstration programs.

Recommendations for promising programs that, based on research or experience are likely to prove successful, are invited. Individual program announcements will be published in the **Federal Register**.

II. Training and Technical Assistance

A major purpose for the use of discretionary grant funds is to support education and training programs for criminal justice personnel and provide technical assistance to state and local criminal justice agencies.

The Bureau proposes to undertake training and technical assistance activities in the following priority areas:

a. *Assistance to Block Grant Projects.* Training and technical assistance will be provided by national contractors to block grant programs funded under the following purpose areas:

Purpose 1—Community Crime Prevention

Purpose 12—Information Systems

Purpose 9—Prison and Jail Capacity

b. *Assistance to the Courts.* This program will assist the courts to increase efficiency through case management and management information systems. Models will be developed for the use of case management teams and case processing "tracks" with time standards. Assistance to states will be provided by a national organization.

c. *Catalog for Prosecution Management Support Systems.* A resource catalog of agencies implementing Prosecution Management Support Systems will be developed to provide projects with a mechanism to obtain technical assistance from other practitioners.

d. *Organized Crime/Drug Prosecutor.* Many state legislatures and/or Governors are examining the potential for the appointment of a statewide

prosecutor for organized crime/narcotics trafficking activities. This project will assist states in implementing this concept once the appointment is made, through training and technical assistance provided by a national contractor.

It is estimated that \$2.9 million will be allocated to training and technical assistance. Individual announcements or solicitations will be published in the **Federal Register**.

III. National/Multi-State Programs

National and multi-state programs address national priorities and initiatives that cannot be met through the state block grants. They reflect administration priorities or gaps in criminal justice funding that are not being met from other sources.

a. *National Citizens Crime Prevention Campaign.* This highly visible and successful program ("Take as Bit Out of Crime") provides public education through a national mass media program, operates a computerized information center on crime prevention programs and resources, and produces and distributes crime prevention materials for use by state and local groups. The Campaign is operated by the National Crime Prevention Council in cooperation with the Advertising Council, Inc., and the Crime Prevention Coalition.

b. *Victims Program.* Several projects will be funded to enhance the capabilities of state and local criminal justice agencies and community-based service organizations to assist crime victims. The Office for Victims of Crime in the Office of Justice Programs will be responsible for the planning, award and administration for this program. *For this program only,* comments should be forwarded to Verne L. Speirs, Administrator, Office of Victims of Crime, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724-5983.

c. *Deadly Force Program.* Appropriate uses of and alternatives to the use of deadly force will be identified by a national law enforcement organization. Recommendations for law enforcement policies related to the use of deadly force will be developed and disseminated through seminars held around the country.

d. *Prison Capacity.* A national organization will be selected to provide

assistance to states in addressing prison capacity problems.

It is anticipated that approximately \$4.8 million will be allocated for national and multi-state programs. Announcements for new initiatives will be published in the **Federal Register**.

IV. General Requirements

a. *Match.* Grants may be awarded for up to 100 percent of program or project costs.

b. *Eligibility.* Public agencies and private non-profit organizations are eligible to apply. Specific eligibility requirements will be set forth in individual announcements.

c. *Period of Support.* Grants may support projects for up to three years and may be renewed for an additional two years if an evaluation indicates that the project has been effective and if the grantee agrees to provide at least one-half of the total cost of the project.

d. *Financial Requirements.* Discretionary grants are governed by the provisions of the Office of Management and Budget (OMB) Circulars applicable to financial assistance. The Circulars along with additional information and guidance are contained in the "Financial and Administrative Guide for Grants" OJP Guideline Manual, OJP M 7100.1C, available from the Office of Justice Programs.

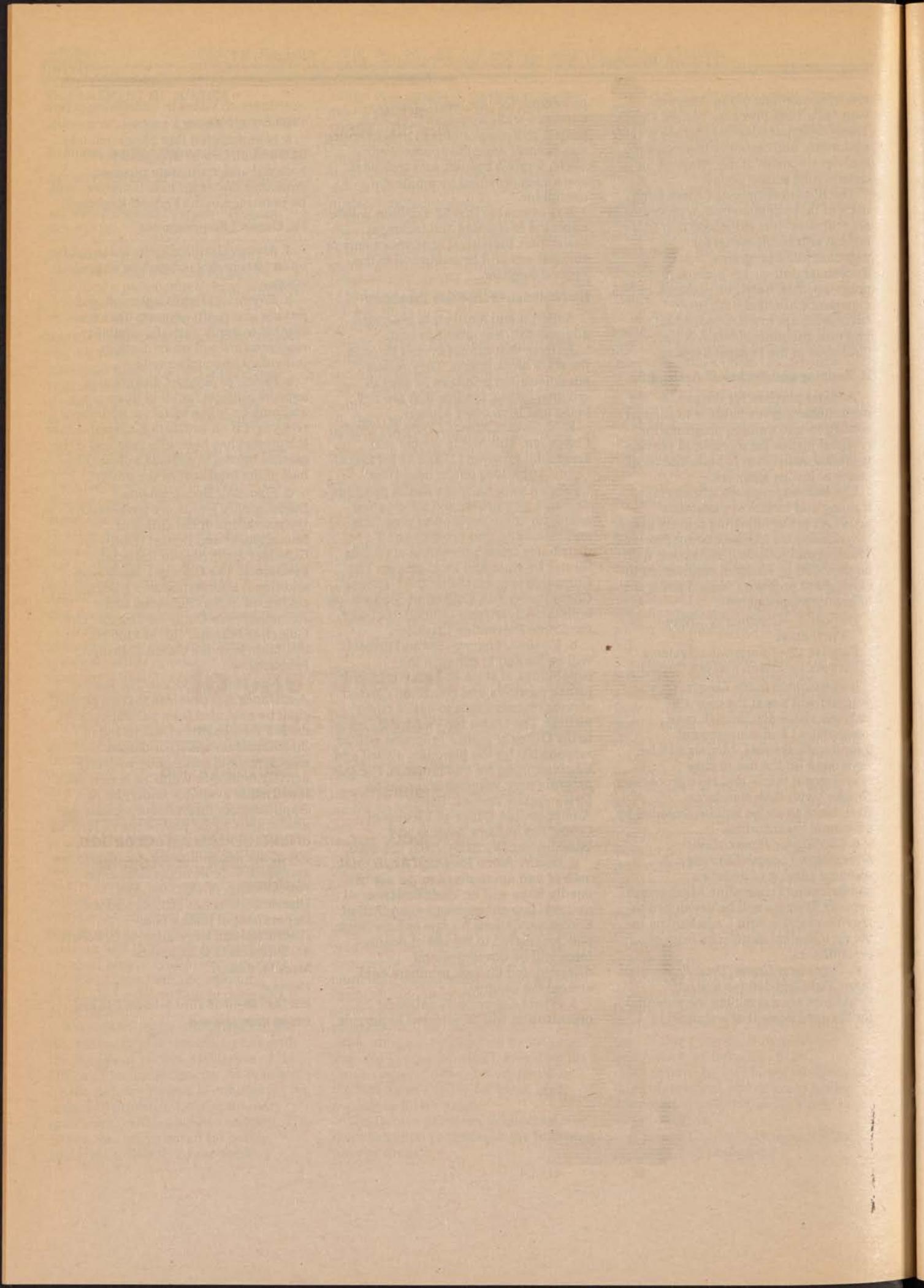
e. *Non-Discrimination.* The Justice Assistance Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded in whole or in part with funds made available under the Act. Applicants for discretionary grants are also subject to the provisions of Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulation 28 CFR Part 42, Subparts C, D, E, and G.

Mack M. Vines,

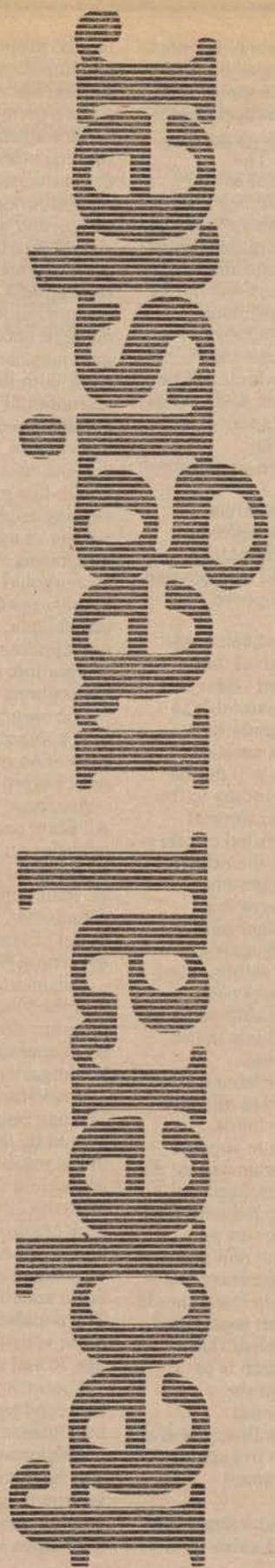
Director.

[FR Doc. 85-10716 Filed 5-12-85; 8:45 am]

BILLING CODE 4410-18-M



Tuesday,
May 13, 1986



Part IV

**Department of
Education**

**Office of Special Education and
Rehabilitative Services**

**Projects for Initiating Special Recreation
Programs for Handicapped Individuals;
Notice of Final Funding**

DEPARTMENT OF EDUCATION

Office of Special Education and
Rehabilitative ServicesProjects for Initiating Special
Recreation Programs for Handicapped
Individuals

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priority
for Fiscal Year 1986.

SUMMARY: The Secretary announces a final annual funding priority for grants for Initiating Special Recreation Programs for Handicapped Individuals. The Secretary announces a single priority to support projects that integrate socialization and recreational opportunities for both handicapped and non-handicapped individuals. This is considered the area of greatest need during Fiscal Year 1986.

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

FOR FURTHER INFORMATION CONTACT: John Eger, Officer of Development Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3330—M/S 2312) Washington, DC 20202 Telephone (202) 732-1344.

SUPPLEMENTARY INFORMATION: Grants for Initiating Special Recreation Programs for Handicapped Individuals are authorized by Section 316 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 777f). Program regulations are established at 34 CFR Part 378. The purpose of the Special Recreation Programs for Handicapped Individuals is to support projects which initiate recreational activities for handicapped individuals.

Summary of Comments and Responses

A notice of proposed annual funding priority was published in the *Federal Register* on November 13, 1985 (50 FR 46813) for Projects for Initiating Special Recreation Programs for Handicapped Individuals. A total of 44 comments were received in response to the Notice of Proposed Funding Priority. Thirty-four of the 44 commenters strongly endorsed the proposed priority. Fourteen commenters suggested that one year was not sufficient time to initiate and develop a project which demonstrates integration of socialization and recreational opportunities, and

recommended multiple years of support. Four other commenters suggested that the Administration should support this program. The President's Budget does not include funds for this program in fiscal years 1986 and 1987. The Department's position is that more appropriate sources of financing for special recreational programs should be used. These include local organizations, private charities, and corporations. In these circumstances, awards will not be made for more than one year. One commenter suggested a method of improving the application review process. This suggestion, which will be fully considered by program staff, is not relevant to this priority announcement. The other comments and the Department's responses are summarized below.

Comment: Several commenters suggested that many of the severely disabled, who cannot participate in integrated programs, would be excluded from support under the proposed priority.

Response: A change has been made. The Secretary has determined that recreational funds provided under this program should be made available to the entire handicapped population. Twenty-five percent of the amount available for this program will not be reserved for projects responding to the priority and will be used to support segregated, partially integrated or other projects not responding to the priority.

Comment: Several commenters suggested that merely integrating recreational programs so that both handicapped and non-handicapped participate is insufficient; rather, there needs to be a sequential approach to offering comprehensive quality services to all handicapped individuals in the least restrictive environment.

Response: A change has been made. The Secretary has decided to allocate twenty-five percent of the funds available for this program to support handicapped recreation projects that do not meet this priority. Thus, applicants desiring to support segregated activities leading to integrated programs may apply for funding under the non-priority category. However, the Secretary has determined that the priority itself should not be changed to allow for segregated activities as this would defeat the purpose of the priority which is to support projects that integrate socialization and recreational opportunities for both handicapped and non-handicapped persons in existing local and national recreational activities.

Comment: One commenter suggested that it would be of limited value if

funded projects simply placed disabled and non-disabled persons in the same setting, whereas projects might influence a more permanent change in the public service structure and attitudes by training community based agency staff or conducting public education within a rehabilitation setting. Another commenter suggested that the projects should provide in-service training for professionals who provide regular recreational activities. A third commenter suggested that grants be made to educational institutions for the dual purpose of training personnel to work with the disabled and to devise recreational programs to integrate handicapped and non-handicapped individuals.

Response: No change has been made. Under this priority, the Secretary is seeking applications that propose a variety of approaches to the problem of integrating socialization and recreational opportunities for both handicapped and non-handicapped individuals. While training is certainly one approach to the problem of integration, it is not the only solution to the problem.

Comment: One commenter suggested that applicants should either be generic recreation providers or show a strong relationship to those providers.

Response: No change has been made. All State and other public or non-profit agencies and organizations are eligible to apply for grants under this program. To limit applicants, as suggested by the commenter, would be contrary to the intent of legislation and regulations governing this program.

Comment: One commenter suggested that the target population for this program, i.e., age 16 and above, should be extended to include children from kindergarten through the 12th grade.

Response: No change has been made. The age range of the population to be served by this program is not specified in the priority. However, the program evaluation criterion at 34 CFR 378.31(f)(2)(i) states that the proposed project should be designed primarily for handicapped individuals being provided vocational rehabilitation services by State vocational rehabilitation units. The population generally served by State vocational rehabilitation units is age 16 and above.

Comment: One commenter suggested that funding guidelines should ensure true integration, not just proximity.

Response: No change has been made. The Secretary agrees that there should be true integration and the final priority emphasizes this. Specific additional guidelines are not considered necessary

and would not contribute significantly toward clarifying the priority. However, all applications submitted in response to this priority that do not ensure true integration will be required to compete under the non-priority category.

Priority

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications submitted in fiscal year 1986 in response to the single priority.

All applications will be evaluated according to criteria which appear in program regulations at 34 CFR 378.31. The single priority is:

Integrated Recreation

The purpose of this priority is to support projects that integrate socialization and recreational opportunities for both handicapped and non-handicapped individuals. The Secretary anticipates that this priority will stimulate greater involvement and participation of handicapped persons in existing local and national recreational

activities and decreases the possibility of restricted and segregated recreational programs. In addition, there should be less duplication of resources for recreation.

(29 U.S.C. 777f)

Dated: May 8, 1986.

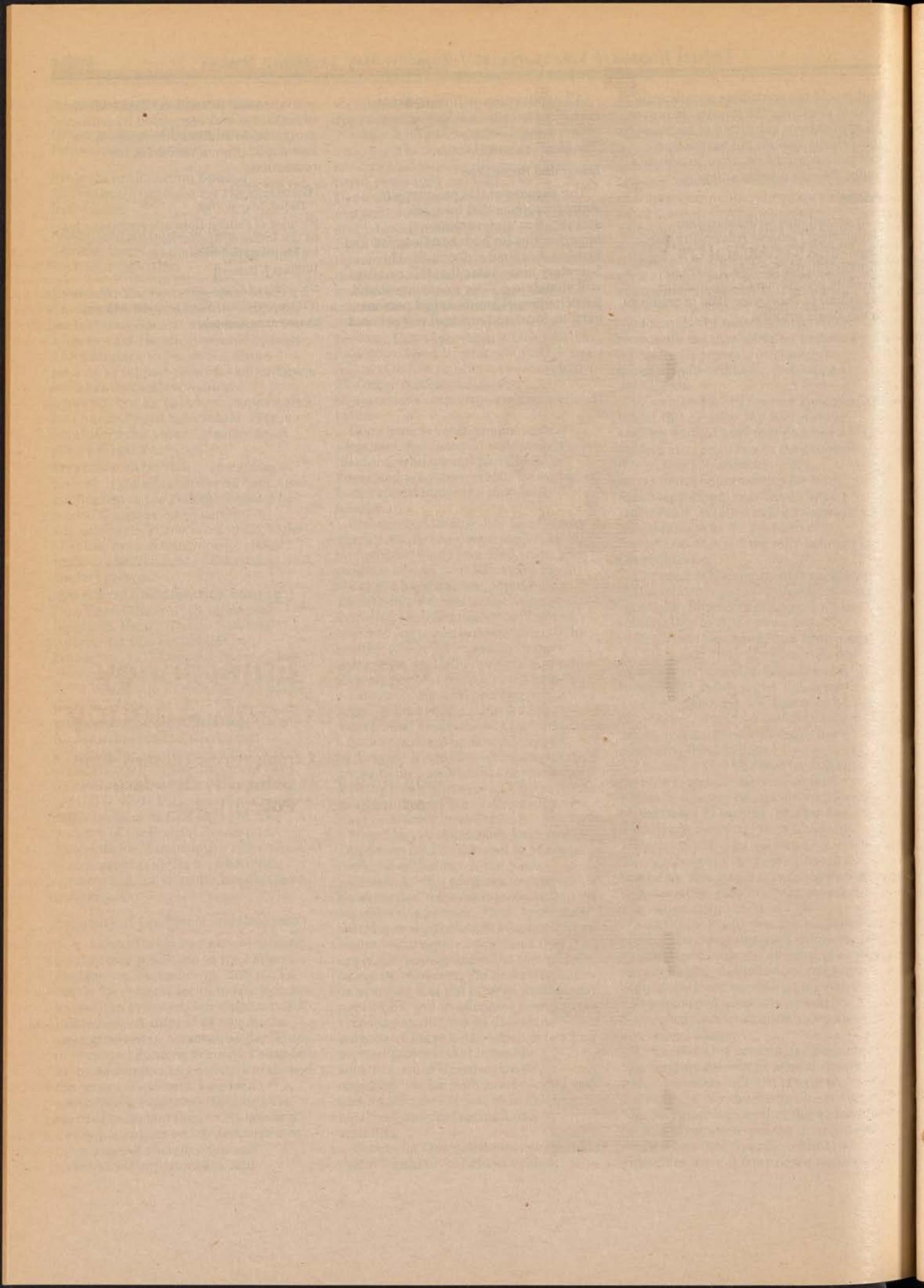
(Catalog of Federal Domestic Assistance No. 84.128, Initiating Special Recreation Programs for Handicapped Individuals)

William J. Bennett,

Secretary of Education.

[FR Doc. 86-10731 Filed 5-12-86; 8:45 am]

BILLING CODE 4000-01-M



Federal Register

Tuesday
May 13, 1986

Part V

Federal Emergency Management Agency

Offer To Assist Insurers in Underwriting
Flood Insurance Using the Standard
Flood Insurance Policy; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Offer to Assist Insurers in Underwriting Flood Insurance Using the Standard Flood Insurance Policy

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency (FEMA).

ACTION: Notice of Offer to Assist Insurers in Underwriting Flood Insurance Using the Standard Flood Insurance Policy.

SUMMARY: The Federal Insurance Administration is publishing in this Notice the Financial Assistance/Subsidy Arrangement for 1986-1987 governing the duties and obligations of insurers participating in the Write-Your-Own Program (WYO) of the National Flood Insurance Program (NFIP). The Financial Assistance, Subsidy Arrangement sets forth the responsibilities of the Government to provide financial and technical assistance to the insurers. It is verbatim what is set out as Appendix A to 44 CFR Part 62 and is republished for information and convenience W2H 5/2/82. This Notice relates to the final rule which was published in the **Federal Register** on April 25, 1985, at page 16236 regarding changes in the National Flood Insurance Program's regulations dealing with the issuance of flood insurance policies and the adjustment of claims and the establishment of a program of assistance to private sector property insurance companies in underwriting flood insurance using the Standard Flood Insurance Policy. Last year, a copy of the offer to participate in the Arrangement was incorporated in the final rule and, this year, a copy of the offer is being published as a Notice.

DATE: The offer is effective upon publication in the **Federal Register**. The Financial Assistance/Subsidy Arrangement is effective with respect to flood insurance policies written under the Arrangement with an effective date of October 1, 1986, and later.

SUPPLEMENTARY INFORMATION: By way of background, the Federal Insurance Administration, working with insurance company executives, FEMA's Comptroller's Office and FEMA's Office of the Inspector General, addressed the operating and financial control procedures. The Statistical Plan, Accounting Procedures, and the Financial Control Plan were specifically referenced in the final rule, and, in addition, procedural manuals have been issued by the FIA in aid of implementation by the WYO companies of the procedures published in the final

rule, such as the Flood Insurance Manual, Flood Insurance Adjuster's Manual, Rollover Procedures and FEMA Letter of Credit Procedures, all of which comprise the operating framework for the WYO Program.

The purposes of this Notice are:

- (1) To offer, publicly, financial assistance to protect against underwriting losses resulting from floods on Standard Flood Insurance Policies written by private sector insurers;
- (2) To provide a method by which the offer may be accepted; and
- (3) To provide notice of the duties and obligations under the Financial Assistance/Subsidy Arrangement for the Arrangement year 1986-87.

Method of Acceptance of Offer

1. Acceptance of this offer shall be by telegraphed or mailed notice of acceptance or signed Arrangement to the Administrator prior to midnight EDT September 30, 1986.
2. The telegraphed or mailed notice of acceptance to the Administrator must be authorized by an official of the insurance company who has the authority to enter into such arrangements.
3. A duly signed original copy of the Notice of Acceptance must be on file with the Administrator by November 15, 1986.
4. If (1), (2) or (3) above are not satisfied, the acceptance will be considered by the Administrator as conditional and the commitment of NFIP resources to fulfill the "Undertaking of the Government" under Article IV of the Arrangement will take a lower priority than those needed to fulfill the requirement of the other participating insurance companies.
5. Send all acceptances of this offer to: FEMA, Attn: Federal Insurance Administrator, WYO Program, Washington, DC 20472.

Offer to Provide Financial Assistance

Pursuant to the provisions of the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001-4128, Reorganization Plan No. 3 of 1978 (3 CFR Part 1978 Comp., p. 329), E.O. 12127, dated March 31, 1979 (3 CFR Part 1979 Comp., p. 376), Delegation of Authority to Federal Insurance Administrator, subject to all regulations promulgated thereunder and, to the duties, obligations and rights set forth in the Financial Assistance/Subsidy Arrangement as printed below, the Federal Insurance Administrator, hereinafter referred to as the "Administrator", offers to enter into the

Financial Assistance/Subsidy Arrangement with any individual private sector property insurance company. This offer is effective only in a state in which such private sector insurance company is licensed to engage in the business of property insurance.

Federal Emergency Management Agency

Federal Insurance Administration

Financial Assistance/Subsidy Arrangement

Purpose: To assist the company in underwriting flood insurance using the Standard Flood Insurance Policy.

Accounting Data: Pursuant to Section 1310 of the Act, a Letter of Credit shall be issued under Treasury Department Circular No. 1075, Revised, for payment as provided for herein from the National Flood Insurance Fund.

Effective Date: October 1, 1986.

Issued by: Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

Article I—Findings, Purpose, and Authority

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended, ("the Act") recognized the benefit of having the National Flood Insurance program (the Program) "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of Section 1310 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (Section 1304 of the Act); and

Whereas, the Program, as presently constituted and implemented, is subsidized, and the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to involve individual Companies in the Program, the initial step of which is to explore ways in which any interested insurer may be able to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

Article II—Undertakings of the Company

A. In order to be eligible for assistance under this Arrangement the Company shall be responsible for:

- 1.0 Policy Administration, including
 - 1.1 Community Eligibility/Rating Criteria
 - 1.2 Policyholder Eligibility Determination
 - 1.3 Policy Issuance
 - 1.4 Policy Endorsements
 - 1.5 Policy Cancellations
 - 1.6 Policy Correspondence
 - 1.7 Payment of Agents Commissions

The receipt, recording, control, timely deposit and disbursement of funds in connection with all the foregoing, and correspondence relating to the above in accordance with the Financial Control Plan requirements.

2.0 Claims processing in accordance with general Company standards. The FIA Claims Manual and Adjuster Management Outline, and Adjuster handbook can be used as guides by the Company, along with the National Flood Insurance Program (NFIP) Write-Your-Own (WYO) Financial Control Plan, Claims Questions and Answers Manual, the Flood Insurance Claims Office (FICO) Manual and other instructional materials.

3.0 Reports

3.1 Monthly Financial Reporting and Statistical Transaction Reporting shall be in accordance with the

requirements of National Flood Insurance Program Statistical Plan for the Write-Your-Own (WYO) program and the Financial Control Plan for business written under the WYO Program. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company financial reports.

3.2 Monthly financial reporting shall be prepared in accordance with the WYO Accounting Procedures.

3.3 The Company shall establish a program of self audit acceptable to the FIA or comply with the self audit program contained in the Financial Control Plan for business written under the WYO Program. The Company shall report the results of this self-audit to the FIA annually.

B. The Company shall use the following time standards of performance as a guide:

- 1.0 Application Processing—15 days (Note: If the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added monies shall be mailed within 10 days);
 - 1.1 Renewal Processing—7 days;
 - 1.2 Endorsement Processing—7 days;
 - 1.3 Cancellation Processing—15 days;
 - 1.4 Correspondence, Simple and/or Status Inquiries—7 days;
 - 1.5 Correspondence, Complex Inquiries—20 days;
 - 1.6 Supply, Materials, and Manual Requests—7 days;
 - 1.7 Claims Draft Processing—7 days from completion of file examination;
 - 1.8 Claims Adjustment—45 days average from receipt of Notice of Loss (or equivalent) through completion of examination.
 - 1.9 For the elements of work enumerated above, the elapsed time shown is from date of receipt through date of mail out. Days means working, not calendar days.

In addition to the standards for timely performance set forth above, all functions performed by the Company shall be in accordance with the highest reasonable attainable quality standards generally utilized in the insurance and data processing industries.

These standards are for guidance. Although no immediate remedy for failure to meet them is provided under this Arrangement, nevertheless, performance under these standards can be a factor considered by the Federal Insurance Administrator (the Administrator) in determining the continuing participation of the Company in the Program.

C. The Company shall coordinate activities and provide information to the FIA or its designee on those occasions when a Flood Insurance Catastrophe Office is established.

D. Policy Issuance

- 1.0 The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.
- 2.0 The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act;
- 3.0 All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator;
- 4.0 All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business;
- 5.0 The Administrator may require the Company to immediately discontinue issuing policies subject to this Arrangement in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall establish a bank account, separate and apart from all other Company accounts, at a bank of its choosing for the collection, retention and disbursement of funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. (Reference: Article IV, Section A). The Company shall invest all funds held in the accounts established pursuant hereto, which funds are not necessary to meet current expenditures, in obligations of the United States Government. Such income as is derived from these investments shall be utilized to meet the obligations of the Company pursuant to flood insurance policies issued hereunder.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company may market flood insurance policies in any manner consistent with its customary method of operation.

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company shall be liable for operating, administrative and production expenses, including any taxes, dividends, agent's commissions or any board, exchange or bureau assessments, or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement.

B. The Company shall be entitled to withhold as operating and administrative expenses, other than agents or brokers commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all the Company's operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. below, which amount shall equal the average of industry expense ratios for "Other Acq." "Gen. Exp." and "Taxes" as published in the latest available (as of March 15 of the prior Arrangement year) "Best's Aggregates and Averages Property Casualty, Industry Underwriting—by Lines for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril combined (weighted average using premiums earned as weights) calculated and promulgated by the Administrator. Premium income net of reimbursement (net premium income) shall be deposited in a special account for the payment of losses and loss adjustment expenses (see Article II, Section E).

The Company shall be entitled to withhold 15.0% of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet commissions and/or salaries of their insurance agents brokers, or other entities producing qualified flood insurance applications and other marketing expense.

With the agreement of the Administrator, the company may pay 3% of the company's written premium on the policies covered by this Arrangement for the right to obtain a reimbursement of state or municipal tax paid on the policies covered by this Arrangement.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to Exhibit A, entitled "Fee Schedule."

3. Special allocated loss expenses shall be reimbursed to the Company for only those expenses the Company has obtained prior approval of the Administrator to incur.

D. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

Loss payments may include payments as a result of awards or judgments for punitive damages arising under the scope of this Arrangement and policies of flood insurance issued pursuant to this Arrangement provided that prompt notice of any claim for punitive damages is received by the Assistant Administrator of the FIA's Office of Insurance Policy Analysis and Technical Services, along with a copy of any material pertinent to the claim for punitive damages.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

Article IV—Undertakings of the Government

A. A Treasury Financial Communication System Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed Federal Reserve Letter of Credit procedures as implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, Sections (C), (D), and (E). Request for funds shall be only when net premium income and income derived from investments and disinvestments have been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit costs.

Request for payment on Letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than \$5,000, and in no case more than \$5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn against the Company for any of the following reasons:

1. payment of claims as described in Article III, Section D; and

2. refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and

3. allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.

2. A mechanism to assist in clarification of coverage and claims questions.

3. Other assistance as needed.

Article V—Commencement and Termination

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the *Federal Register* and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for one (1) year following the effective expiration date only for those policies issued during the original term of this Arrangement, or any renewal thereof, or (2) require the transfer to the FIA of:

a. All data received, produced, and maintained through the life of the Company's participation in the Program; and

b. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

c. All claims and policy files, including those pertaining to receipts and disbursements which have occurred

during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be cancelled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be cancelled for any new or renewal business, but the Arrangement shall continue for policies in force which shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

Article VI—Information and Annual Statements

The Company shall furnish to the FIA such summaries and analyses of information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty

Annual Statement, and Insurance Expense Exhibit or amendments thereof, as filed with the State Insurance Authority of the Company's domiciliary State.

Article VII—Cash Management and Accounting

A. The FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV which exceed net written premiums and interest income collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. At the end of each fiscal year, the Company shall remit to the FIA any funds in excess of those required to meet expenses for loss and loss adjustment. Such liabilities shall be defined as liabilities established for case reserves and reserves established for losses incurred but not reported, plus \$5,000.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities which shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

Article VIII—Arbitration

A. If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint

an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article IX—Errors and Omissions

The parties shall not be liable to each other for damages caused by ordinary negligence arising out of any transaction or other performance under this Arrangement, nor for any inadvertent delay, error, or omission made in connection with any transaction under this Arrangement, provided that such delay, error, or omission is rectified by the responsible party as soon as possible after discovery.

Article X—Officials Not to Benefit

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article XI—Offset

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts of credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this

Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset. Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

Article XII—Equal Opportunity

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

Article XIII—Restriction on Other Flood Insurance

As a condition of entering into this Arrangement the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

Article XIV—Access to Books and Records

The FIA and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination, shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records which fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access

to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

Article XV—Compliance with Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term thereof.

Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

In witness whereof, the parties hereto have accepted this Arrangement on this _____ day of _____, 1986.

Company

The United States of America, Federal Emergency Management Agency.

by _____
by _____

(Title)

(Title)

Notice of Acceptance for Federal Emergency Management Agency; Federal Insurance Administration

Financial Assistance/Subsidy Arrangement (Arrangement)

Whereas, in 1986, there was published a Notice of Offer by the Federal Emergency Management Agency to enter into a Financial Assistance/Subsidy Arrangement (hereafter, the Arrangement).

Whereas, the above cited Arrangement, as published in and reprinted from the **Federal Register**, does not provide sufficient space to type in the name of the company.

Whereas, the Arrangement may include several individual companies within a Company Group and the Arrangement as published in and reprinted from the **Federal Register** does

not provide sufficient space to type in a list of companies.

Therefore, the parties hereby agree that this Notice of Acceptance form is incorporated into and is an integral part of the entire Arrangement and is substituted in place of the signature block contained in the **Federal Register** under Article XVI of the Arrangement. The above mentioned Arrangement is effective in the States in which the insurance company(ies) listed below is (are) duly licensed to engage in the business of property insurance:

In witness, whereof, the parties hereto have accepted the Arrangement on this _____ day of _____.

The United States of America Federal Emergency Management Agency.

By: _____

Title: _____
By: _____

Title: _____

Exhibit A

FEE SCHEDULE

Range (by covered loss)	Fee
Erroneous assignment.....	\$40.00
CWP.....	70.00
\$0.01 to \$200.00.....	70.00
\$200.01 to \$400.00.....	90.00
\$400.01 to \$600.00.....	110.00
\$600.01 to \$800.00.....	130.00
\$800.01 to \$1,000.00.....	150.00
\$1,000.01 to \$1,500.00.....	180.00
\$1,500.01 to \$2,000.00.....	200.00
\$2,000.01 to \$2,500.00.....	220.00
\$2,500.01 to \$3,000.00.....	240.00
\$3,000.01 to \$3,500.00.....	260.00
\$3,500.01 to \$4,000.00.....	280.00
\$4,000.01 to \$4,500.00.....	300.00
\$4,500.01 to \$5,000.00.....	320.00
\$5,000.01 to \$6,000.00.....	350.00
\$6,000.01 to \$7,000.00.....	370.00
\$7,000.01 to \$8,000.00.....	380.00
\$8,000.01 to \$9,000.00.....	400.00
\$9,000.01 to \$10,000.00.....	420.00
\$10,000.01 to \$15,000.00.....	460.00
\$15,000.01 to \$20,000.00.....	490.00
\$20,000.01 to \$25,000.00.....	520.00
\$25,000.01 to \$30,000.00.....	550.00
\$30,000.01 to \$35,000.00.....	580.00
\$35,000.01 to \$40,000.00.....	610.00
\$40,000.01 to \$45,000.00.....	640.00
\$45,000.01 to \$50,000.00.....	670.00
\$50,000.01 to \$75,000.00.....	800.00
\$75,000.01 to \$100,000.00.....	950.00
\$100,000.01 to \$125,000.00.....	1,100.00
\$125,000.01 to \$150,000.00.....	1,250.00
\$150,000.01 to \$175,000.00.....	1,400.00
\$175,000.01 to \$200,000.00.....	1,550.00
\$200,000.01 to limits.....	1,700.00

Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles (\$500 and \$50) and limited to the amounts of insurance purchased.

Dated: May 7, 1986.

Jeffrey S. Bragg,
Federal Insurance Administrator.

[FR Doc. 86-10725 Filed 5-12-86; 8:45 am]

Federal Register

Tuesday,
May 13, 1986

Part VI

Department of Agriculture

Commodity Credit Corporation

Proposed Determinations With Regard to
Common Program Provisions for the
1987 Crops of Wheat, Feed Grains,
Upland Cotton and Rice; and Proposed
Determinations With Regard to the 1987
Wheat Program

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Proposed Determinations With Regard to Common Program Provisions for the 1987 Crops of Wheat, Feed Grains, Upland Cotton and Rice

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the common program provisions which are applicable to the 1987 crops of wheat, feed grains, upland cotton and rice: (a) Whether the same program enrollment periods should be applicable to such crops or whether individual program enrollment periods with varying signup dates based upon geographical location should be established; (b) whether the production of approved nonprogram crops (ANPC) should be allowed on underplanted program crop permitted acreage; (c) whether to permit the production of alternative crops on reduced acreage; (d) whether to require offsetting and cross compliance; (e) whether advance payments (deficiency or diversion) should be offered; (f) whether an advance recourse commodity loan program should be implemented; (g) whether a multiyear set-aside program should be implemented; (h) whether producers should be permitted to increase a crop acreage base by an amount not to exceed 10 percent of farm acreage base if such producers decrease another crop acreage base on such farm by a corresponding amount; (i) whether the actual yield per harvested acre for the 1987 crops should be considered in establishing a subsequent year's farm program payment yields; and (j) the proposed procedure for crediting prevented planting and failed acreage. These determinations are made pursuant to the Agricultural Act of 1949, as amended (the "1949 Act").

DATE: Comments must be received on or before May 26, 1986, in order to be assured of considerations.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Bruce R. Weber, Agricultural Marketing Specialist, Commodity Analysis Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447-4146. The Preliminary Regulatory Impact Analysis describing the options

considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of \$100 million or more.

The title and number of the Federal assistance programs to which this notice applies are: Commodity Loans and Purchases—10.051; Upland Cotton Stabilization—10.052; Feed Grains Production Stabilization—10.055; Wheat Production Stabilization—10.058; Rice Production Stabilization—10.065, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject of this notice.

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

Determinations with respect to the common program provisions pertaining to the 1987 crops of wheat, feed grains, upland cotton, and rice should be made in sufficient time to permit producers, especially wheat producers, to make timely plans for the 1987 crops. Accordingly, it has been determined that the public comment period should be limited to a period of 15 days from the date this notice is filed with the **Federal Register**. This will allow the Secretary time to consider the comments received before the final program determinations are made.

The following proposed program determinations with respect to the common program provisions that are applicable to the 1987 crops of wheat, feed grains, upland cotton and rice are to be made by the Secretary:

Proposed Determinations

a. *Enrollment Period:* Historically, the program enrollment periods for wheat, feed grains, cotton and rice have been conducted concurrently on a nationwide basis. Interested persons have raised concerns as to whether such a practice

provides equity among producers of the same commodity in all production regions of the United States. These persons suggest that a staggered enrollment period should be implemented to afford producers in different regions of the United States approximately the same knowledge concerning potential crop conditions at the time such producers make program participation decisions.

The Secretary proposes to begin the program enrollment period for the 1987 crops of wheat, feed grains, upland cotton and rice as soon as possible after all program provisions have been announced. Accordingly, comments are requested as to: (1) Whether the program enrollment period should continue to be held concurrently for all program crops; (2) whether varying signup dates should be established for each commodity program based on geographic location; and the dates which should be established for the program enrollment period for each commodity program.

b. *Approved Nonprogram Crops (ANPC) and Haying and Grazing on Underplanted Program Permitted Acreage (50/92 Provisions):* Sections 107D(c)(1)(C) and (K), 105C(c)(1)(B) and (I), 103A(c)(1)(B) and (G), and 101A(c)(1)(B) and (G) of the 1949 Act provide that if an acreage limitation program (ALP) is in effect for a crop of wheat, feed grains, upland cotton, and rice and the producers on a farm: (1) Devote a portion of the permitted commodity acreage of the farm equal to more than 8 percent of the permitted commodity acreage of the farm for the crop to conservation uses or approved nonprogram crops and (2) actually plant on the farm the respective program crop for harvest on an acreage equal to at least 50 percent of the permitted acreage for such crop, such portion of the permitted program commodity acreage (i.e., the crop acreage base minus reduced and diverted acreage) of the farm in excess of 8 percent of such acreage devoted to conservation uses or approved nonprogram crops shall be considered to be planted to such program commodity for the purpose of determining the individual farm program acreage and for the purpose of determining the acreage on the farm required to be devoted to conservation uses.

If a State or local agency has imposed in an area of a State or county a quarantine on the planting of a program commodity for harvest on farms in such area, the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment

Act (16 U.S.C. 590h(b)) may recommend to the Secretary that payments be made, without regard to the 50-percent planting requirements, to producers in such area who were required to forgo the planting of the program commodity for harvest on acreage in order to alleviate or eliminate the condition requiring such guarantee. If the Secretary determines that such condition exists, the Secretary may make payments to such producers. To be eligible for payments such producers must devote such acreage to conservation uses or approved nonprogram crops.

Any acreage considered to be planted to a program commodity may not also be designated as conservation use acreage for the purpose of fulfilling any provisions under any acreage limitation, set-aside program, or land diversion program requiring that the producers devote a specified acreage to conservation uses.

The Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of acreage otherwise required to be devoted to conservation uses as a condition of qualifying for payments as provided in the previous paragraphs to be devoted to sweet sorghum or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, commodities for which no substantial domestic production or market exists but that could yield industrial raw material which is being imported, or likely to be imported, into the United States, or commodities grown for experimental purposes (including kenaf), except that the Secretary may permit such acreage to be devoted to such production only if the Secretary determines that:

(1) The production is not likely to increase the cost of the price support program and will not affect farm income adversely; and

(2) The production is needed to provide an adequate supply of the commodity, or, in the case of commodities for which no substantial domestic production or market exists but that could yield industrial raw materials, the production is needed to encourage domestic manufacture of such raw material and could lead to increased industrial use of such raw material to the long-term benefit of United States industry.

The Secretary shall permit, at the request of the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State and subject to such terms and conditions as the Secretary may prescribe, all or any

part of acreage otherwise required to be devoted to conservation uses as a condition of qualifying for payments in such State to be devoted to haying and grazing if the Secretary determines that haying and grazing would not have an adverse economic effect.

Comments are requested as to whether the Secretary should permit haying and grazing of acreage otherwise required to be devoted to conservation uses as a condition of qualifying for deficiency payments and whether nonprogram crops should be approved for production on such acreage.

c. Uses of Reduced and Diverted Acreage: Sections 107D(f)(4), 105C(f)(4), 103A(f)(3), and 101A(f)(3) of the 1949 Act provide that the regulations issued by the Secretary with respect to acreage required to be devoted to conservation uses under the acreage limitation and diversion programs shall assure protection of such acreage from weeds and wind and water erosion.

The Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage to be devoted to sweet sorghum, hay and grazing, or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodity, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program, and will not affect farm income adversely.

The Secretary shall permit, at the request of the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State and subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage diverted from production by participating producers in such State to be devoted to grazing in the case of the 1987 crops of wheat, feed grains, upland cotton, and rice. Grazing shall not be permitted for any crop during any 5-consecutive-month period that is established for such crop by the State committee.

In determining the amount of land to be devoted to conservation uses under an ALP for wheat and feed grains with respect to land that has been farmed utilizing summer fallow practices, as defined by the Secretary, the Secretary shall consider the effects of soil erosion and such other factors as the Secretary considers appropriate.

The Secretary proposes: (1) That the planting of alternative crops on acreage required to be devoted to approved conservation uses for the 1987 wheat,

feed grains, cotton and rice ALP and diversion programs would not be permitted and (2) that nationally approved conservation uses on reduced or diverted acreage remain unchanged from those in effect for the 1986 crops, including summer-fallow rules. These rules provided that land in an area determined by ASCS to be an area in which summer fallowing is a common practice is eligible for designation as ACR if such land has been planted to a crop in at least one of the previous two years. For all other areas, land is eligible for designation as ACR if it has been planted to a crop in at least two of the previous three years.

Comments on the planting of alternate crops and approved conservation uses on the reduced or diverted acreage are requested.

d. Cross and Offsetting Compliance Requirements: Sections 107D(n)(1-2), 105C(n)(1-2), 103A(n)(1-2), and 101A(n)(1-2) of the 1949 Act provide with respect to wheat, feed grains, upland cotton, and rice, that the Secretary may not require as a condition of eligibility for loans, purchases, or payments, compliance on a farm with the terms and conditions of any other commodity program (strict cross compliance). However, if an ALP is established for a crop of wheat, feed grains, upland cotton, or rice, the Secretary may require that, as a condition of eligibility of producers on a farm for loans, purchases, or payments for such crops, the acreage planted for harvest on the farm to such commodities and ELS cotton, if an ALP is in effect for such crops shall not exceed the crop acreage base for that commodity. This requirement is referred to as limited cross compliance.

Sections 103A(n)(3) and 101A(n)(3) which are applicable to upland cotton and rice provide that the Secretary may not require producers on a farm, as a condition of eligibility for loans, purchases, or payments to comply with the terms and conditions of the upland cotton and rice programs with respect to any other farm operated by such producers (offsetting compliance). No similar requirements are applicable to wheat and feed grains. However, in accordance with sections 107D(i) and 105C(i) of the 1949 Act, the Secretary may issue regulations the Secretary determines necessary to carry out the wheat and feed grains programs. In some prior crop years, the Secretary has promulgated regulations providing for offsetting compliance requirements. If offsetting compliance is required, operators and owners of farms would have to ensure that all of the farms in

which they have an interest were either in compliance with the program requirements on the acreages of wheat or feed grains planted to harvest on each of such farms did not to exceed the wheat or feed grain crop acreage base established for such farms.

The Secretary intends to implement limited cross compliance requirements for the 1987 crops of wheat, feed grains, upland cotton and rice and does not intend to impose offsetting compliance requirements for wheat and feed grains.

Comments are requested concerning the limited cross compliance requirements for wheat, feed grains, cotton and rice and the offsetting compliance requirements for wheat and feed grains.

e. Advance Recourse Loans: Section 424 of the 1949 Act provides that the Secretary may make advance recourse loans to producers of these commodities for which nonrecourse loans are available if it is determined such a program is necessary to ensure adequate operating credit is available to producers. These recourse loans may be made available under terms and conditions prescribed by the Secretary, except that the producer shall be required to obtain crop insurance for the crop as a condition of eligibility for a loan.

Comments are requested as to whether an advance recourse loan program should be offered for those commodities for which nonrecourse loans are available for the 1987 crops.

f. Multiyear Set-Asides: Section 1010 of the Food Security Act of 1985 provides that the Secretary may enter into multiyear set-aside contracts for a period not to extend beyond the 1990 crops. Such contracts may be entered into only as a part of the programs in effect for wheat, feed grains, upland cotton, and rice and only to producers participating in one or more of such programs. Producers agreeing to a multiyear set-aside agreement would be required to devote the set-aside acreage to vegetative cover capable of maintaining itself through the contract period, to provide soil protection, water quality enhancement, wildlife production, and natural beauty. Grazing of such acreage is prohibited except under major disaster conditions. Cost-share assistance must be provided for the establishment of vegetative cover.

The Secretary does not intend to implement a multiyear set-aside program. The acreage required to be devoted to approved conservation uses under the annual acreage limitation and, if authorized, paid land diversion programs combined with acreage placed into the conservation reserve program

are considered adequate programs for the purposes of supply management of program commodities.

Comments as to whether a multiyear set-aside program should be implemented are requested.

g. Advance Payments: Sections 107C(a)(1), (a)(2)(A-F), and (b) of the 1949 Act provide that, if the Secretary establishes an acreage limitation for the 1987 crops of wheat, feed grains, upland cotton, and rice and determines that deficiency payments will likely be made for such crop, the Secretary may make advance deficiency payments available to producers for the 1987 crops.

Advance deficiency payments may be made available to producers in the form of: (1) Cash, (2) commodities owned by CCC, or (3) certificates redeemable in a commodity owned by the CCC, except that not more than 50 percent of the advance deficiency payments may be made in commodities or certificates to any producer.

Advance deficiency payments may be made available as the Secretary determines appropriate to encourage adequate participation in the programs, except that the amount of such payments may not exceed an amount which is determined by multiplying: (1) the estimated farm program acreage for the crop, by (2) the farm program payment yield for the crop, by (3) 50 percent of the projected payment rate, as determined by the Secretary.

If the Secretary makes paid land diversion payments to assist in adjusting the total national acreages of the 1987 crops of wheat, feed grains, upland cotton, and rice to desirable goals, the Secretary may make at least 50 percent of such payments available to a producer as soon as possible after the producer agrees to undertake the diversion of land in return for such payments.

Under the 1986 wheat and feed grains programs producers were offered advance deficiency payments equal to 40 percent of the estimated total deficiency payments (75 percent cash and 25 percent in commodity certificates). For upland cotton and rice, advance cash deficiency payments were offered in an amount equal to 30 percent of the total estimated deficiency payments. All wheat and feed grains diversion payments were offered in advance payable in commodity certificates.

Comments are requested as to whether advance deficiency and diversion payments should be made for the 1987 crops of wheat, feed grains, upland cotton, and rice and, if so, in what amount and the manner of payment.

h. Adjusting Crop Acreage Bases By Up To 10 Percent of Farm Acreage Base: Section 503(b)(2) of the 1949 Act requires the establishment of a farm acreage base (FAB) for the 1987 crops of wheat, feed grains, upland cotton, and rice.

The FAB shall include: (1) The sum of the crop acreage bases (CAB) established for a farm and (2) the sum of (A) the average of the 1986 acreage planted to soybeans and (B) the average of the acreage on the farm devoted to a conserving use in the normal course of farming operations.

Section 505(a) provides that the Secretary may allow an upward adjustment of any CAB except such adjustment may not exceed 10 percent of the FAB. Any upward adjustment in a CAB established for a farm must be offset by an equivalent downward adjustment in one or more other CAB's established for such farm.

The Secretary proposes not to implement the option of adjusting CAB's by an amount not to exceed 10 percent of the FAB. Comments are requested on whether such a program should be implemented.

i. 1987 Yields: Sections 506(a), (b)(1-3), and (c) of the 1949 Act provide that the Secretary shall provide for the establishment of a farm program payment yield for each farm for each program crop. The farm program payment yield for the 1987 crop year shall be the average of the farm program payment yields for the farm for the 1981 through 1985 crop years, excluding the year in which such yield was the highest and the year in which such yield was the lowest. With respect to the 1987 crop year for a commodity, if the farm program payment yield for a farm is reduced by more than 5 percent below the farm program payment yield for the 1985 crop year, the Secretary shall make available to producers established price payments for the commodity (in the form of commodities owned by CCC) in such amount as the Secretary determines is necessary to provide the same total return to producers as if the farm program payment yield had not been reduced more than 5 percent below the farm program payment yield for the 1985 crop year.

For the 1988 and subsequent crop years, the Secretary may: (1) Establish a farm program payment yield as the average of the farm program payment yields for the farm for the 1981 through 1985 crop years, excluding the year in which such yield was the highest and the year in which such yield was the lowest, or (2) establish a farm program payment yield for any program crop on

the basis of the average of the yield per harvested acre for the crop for the farm for the immediately preceding five crop years, excluding the crop year with the highest yield per harvested acre, the crop year with the lowest yield per harvested acre, and any crop year in which such crop was not planted on the farm. For purposes of clause (2) of the preceding sentence, the farm program payment yield for the 1983 through 1986 crop years and the actual yield per harvested acre for the 1987 and subsequent crop years shall be used in determining farm program payment yields. Also, for purposes of establishing a farm program payment yield for any program crop for the 1988 and subsequent crop years, the farm program payment yield for the 1986 crop year may not be reduced more than 10 percent below the farm program payment yield for the farm for the 1985 crop year.

Comments are requested as to whether the Secretary should utilize the actual yield per harvested acre for the 1987 crops of wheat, feed grains, upland cotton, and rice for the establishment of subsequent years farm program payment yields.

j. Crediting Prevented Planting and Failed Acreage: Section 504(b)(2)(B) of the 1949 Act provides that the acreage considered planted to a program crop shall include any acreage on the farm that producers were prevented from planting to such crop because of drought, flood, other natural disaster, or other conditions beyond the control of the producers.

Section 504(d) provides that, if the occurrence of a natural disaster or other similar conditions beyond the control of the producer prevented the planting of a program crop on the farm or substantially destroyed such program crop after it had been planted but before it had been harvested (failed acreage), such acreage may be planted by the producer to a substitute crop including any program crop. For purposes of determining the FAB or CAB on the farm such substitute acreage shall be treated as if such acreage had been planted to the program crop for which the other crop was substituted.

It is proposed for the 1987 crops of wheat, feed grains, upland cotton, and rice that prevented planting and failed acreage be considered as planted as follows:

1. For Program Crops on Farms on Which Producers Are Participating in the 1987 Programs:

Prevented planted and failed acreage would be credited in an amount not to exceed the crop permitted acreage for the program crop.

2. For Program Crops on Farms on Which Producers Are Participating in the 1987 Programs:

a. Prevented planted acreage would be credited in an amount not to exceed the CAB.

b. Failed acreage would be credited to the extent the acreage was planted.

Comments are requested with respect to this proposal with respect to prevented planted and failed acreage.

Consideration will be given to any data, views and recommendations that may be received relating to the above items.

Authority: Sections 101A, 103A, 105C, 107C, 107D, 424, 504, 505, and 506 of the Agricultural Act of 1949, as amended; 99 Stat. 1419, as amended, 1407, as amended, 1398, as amended, 1446, 1383, as amended, 1447, 1461, as amended, 1462, 1463 (7 U.S.C. 1441-1, 1444-1, 1444c, 1445b-2, 1445b-3, 1443c, 1464, 1465, and 1466); Section 1010 of the Food Security Act of 1985, as amended; 99 Stat. 1454 (7 U.S.C. 1445i).

Signed at Washington, DC, on May 9, 1986.

Milt Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-10856 Filed 5-9-86; 4:14 pm]

BILLING CODE 3410-05-M

Proposed Determinations With Regard to the 1987 Wheat Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed Determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1987 crop of wheat: (a) The loan and purchase level; (b) whether a marketing loan program should be implemented; (c) the established "target" price; (d) the percentage reduction under an acreage limitation program (ALP); (e) whether an optional land diversion program should be established and, if so, the percentage of diversion under the program; (f) if a marketing loan program is implemented, whether the inventory reduction program should also be implemented; (g) whether a portion or all of the deficiency or diversion payments should be made in the form of commodity certificates; (h) provisions of the farmer-owned reserve (FOR) program; (i) whether a wheat export certificate program should be implemented; (j) whether the special wheat grazing and hay program should be implemented (k) other related provisions. These determinations are made pursuant to the Agricultural Act of 1949, as amended (the "1949 Act") and the Commodity

Credit Corporation (CCC) Charter Act, as amended.

DATE: Comments must be received on or before May 27, 1986, in order to be assured of considerations.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Bruce R. Weber, Agricultural Marketing Specialist, Commodity Analysis Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013 or call (202) 447-4146. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of \$100 million or more.

The title and number of the Federal assistance programs to which this notice applies are: Title-Wheat Production Stabilization; Number 10.058 and Title-Commodity Loans and Purchases; Number 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the CCC is not required by U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject of this notice.

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

Certain determinations set forth in this notice with respect to the 1987 Wheat Program are required to be made by the Secretary by June 1, 1986. In addition, it is necessary that the determinations for the 1987 crop be made in sufficient time to permit wheat producers to make plans to plant their 1987 crop. Accordingly, the public comment period is limited to 15 days from the date this notice is filed with the **Federal Register**. This will allow the Secretary time to consider the comments received before the final program determinations are made.

Elsewhere in this issue, a notice of proposed determinations was published which set forth provisions common to the 1987 wheat, feed grain, upland cotton, and rice price support and production adjustment programs and includes a proposal as to whether program enrollment periods should be staggered or conducted concurrently on a nationwide basis.

The comments received with respect to such notice and this notice of proposed determination which is applicable only to the 1987 crop of wheat will be reviewed in determining the provisions of the 1987 Wheat Program.

Accordingly, the following proposed program determinations with respect to the 1987-crop of wheat are to be made by the Secretary:

Proposed Determinations

a. *Loan and Purchase:* Sections 107D(a)(1), (3) and (4) of the 1949 Act provide that the Secretary shall make available to producers loans and purchases for the 1987-crop of wheat at such level as the Secretary determines will maintain the competitive relationship of wheat to other grains in domestic and export markets after taking into consideration the cost of producing wheat, supply and demand conditions, and world prices for wheat.

For any crop of wheat for which marketing quotas are not in effect, the basic loan and purchase level which is determined shall not be less than 75 percent, nor more than 85 percent, of the simple average price received by producers of wheat, as determined by the Secretary, during the marketing years for the immediately preceding 5 crops of wheat, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, except that the loan and purchase level for a crop may not be reduced by more than 5 percent from the level determined for the preceding crop.

Also, if the Secretary determines that the average price received by producers for wheat in the previous marketing year was not more than 110 percent of the loan and purchase level for wheat for such marketing year or determines that such action is necessary to maintain a competitive market position for wheat, the Secretary may reduce the 1987-crop loan and purchase level for wheat by the amount the Secretary determines necessary to maintain domestic and export markets for grain. The basic loan and purchase level may not be reduced by more than 20 percent. Any reduction in the loan and purchase level for wheat shall not be considered in determining

the loan and purchase level for wheat for subsequent years.

The 1987-crop basic loan and purchase level for wheat will be determined based upon the simple average marketing prices received by producers during the 1982 through 1986 crops of wheat. These prices are:

Crop year:	Average price/ bushel
1982.....	\$3.55
1983.....	3.53
1984.....	3.38
1985 (Estimated).....	3.10
1986 (Projected).....	2.40

Crop year prices 1982 and 1986 would not be considered in making this determination since they are the highest and lowest prices during the 5-year base period. The average of the remaining prices would be approximately \$3.34 per bushel with 75-85 percent of such amount equal to \$2.51-\$2.84 per bushel. Since these levels are below 95 percent of the 1986 basic loan and purchase level of \$3.00 per bushel, the 1987 basic loan and purchase level for wheat may not be less than \$2.85 per bushel.

If it is determined necessary to maintain domestic and export markets for grain, the Secretary proposes to reduce the basic 1987-crop loan and purchase level for wheat to the level deemed necessary. This adjusted level can be no lower than \$2.28 per bushel (\$2.85 per bushel times 0.8).

Comments on the level of loans and purchases for the 1987 crop of wheat are requested.

b. *Marketing Loans and Loan Deficiency Payments:* Sections 107D(5)(a) and (b) of the 1949 Act provide that the Secretary may permit a producer to repay a loan for a crop at a level that is the lesser of: (1) The announced loan level or (2) the higher of: (i) 70 percent of the basic loan or (ii) the prevailing world market price for wheat, as determined by the Secretary.

If the Secretary permits a producer to repay a loan as described above, the Secretary shall prescribe by regulation (1) a formula to define the prevailing world market price for wheat and (2) a mechanism by which the Secretary shall announce periodically the prevailing world market price for wheat.

Additionally, the Secretary may, for the 1987 crop of wheat, make payments available to producers who, although eligible to obtain a loan or purchase agreement, agree to forgo obtaining such loan or agreement in return for such payments. The payment shall be computed by multiplying: (1) The loan

payment rate by (2) the quantity of wheat the producer is eligible to place under loan.

The quantity of wheat to be pledged as collateral for a CCC price support loan may not exceed the product obtained by multiplying: (1) The individual farm program acreage for the crop by (2) the farm program payment yield established for the farm. The loan payment rates shall be the amount by which the announced loan level exceeds the level at which a loan may be repaid.

Comments on whether the Secretary should implement marketing loans and "loan deficiency" payments for the 1987 crop of wheat and the formula and methodology for determining the prevailing world market price to be used if marketing loans are implemented are requested.

c. *Established "Target" Price:* Section 107D(c)(1)(A) of the 1949 Act provides that the Secretary shall make available to producers payments for the 1987 crop of wheat in an amount computed by multiplying: (1) The payment rate by (2) the individual farm program acreage by (3) the farm program payment yield.

Section 107D(c)(1)(D)(i) of the 1949 Act provides that the payment rate for the 1987 crop of wheat shall be an amount by which the established "target" price for such crop exceeds the higher of: (1) The national weighted average market price received by producers during the first five months of the marketing year for such crop and (2) the basic loan level for such crop. Section 107D(c)(1)(E) provides that if the level of basic loan is adjusted, the Secretary shall provide emergency compensation by increasing the established price "deficiency" payments by an amount determined necessary to provide the same total return to producers as if the adjustment in the basic loan level had not been made. In determining the "deficiency" payment rate, the Secretary shall use the national weighted average market price of wheat received by producers during the marketing year for such crop. Section 107D(c)(1)(G) provides that the established "target" price for the 1987 crop of wheat shall not be less than \$4.38 per bushel. Section 107D(c)(1)(J) provides that the Secretary may pay not more than 5 percent of the total amount of such payments in the form of wheat. The use of wheat in making payments to producers shall be subject to a determination by the Secretary of the effect that such in-kind payments will have on the market prices of any commodity.

Section 107D(c)(1)(H) of the 1949 Act provides that the Secretary may

determine the established "target" price on the basis of: (1) The percentage by which producers reduce the acreage planted to wheat on the farm in accordance with an acreage limitation program or (2) a graduated scale of production under which the amount of the payments made to producers would vary for specified quantities of wheat produced by producers and such payments would be targeted to commercial family farmers who have annual gross sales in excess of \$20,000.

Section 107D(c)(1)(D) of the 1949 Act provides that, with respect to the 1987 crop of wheat, if the national weighted average market price received by producers during the first 5 months of the marketing year exceeds \$2.65 per bushel, the "deficiency" payment rate shall be determined based upon the difference between the established "target" price, (i.e., \$4.38 per bushel) and the higher of (1) the national weighted average price received by producers during the first five months of the marketing year (June–October, 1987) and (2) the basic loan level (i.e., \$2.85 per bushel). Accordingly, the maximum payment rate would be \$1.53 per bushel.

Section 107D(c)(1)(E) of the 1949 Act provides that, notwithstanding the provisions of Sections 107D(c)(1)(A)–(D), if the Secretary exercises the discretionary authority to adjust the loan and purchase level the Secretary shall increase the established price payments in such amount as the Secretary determines necessary to provide the same total return to producers as if such adjustment had not been made. This second payment rate level will be determined based upon the difference between the basic loan level, (i.e., \$2.85 per bushel), and the higher of: (1) The weighted national average market price of wheat received by producers during the 1987–88 marketing year (June, 1987–May, 1988) and (2) the adjusted loan level, but not less than \$2.28 per bushel. The maximum payment rate would be \$0.57 per bushel and is not subject to the \$50,000 payment limitation.

Comments are requested whether the Secretary should make a portion of the 1987 wheat crop deficiency payment in the form of in-kind compensation and whether the established "target" price should be determined in accordance with section 107D(c)(1)(H) of the 1949 Act.

d. Acreage Limitation Program (ALP): Sections 107D(f)(1)(c), (f)(2)(A)(i), (f)(B), and (f)(D) (i) and (ii) of the 1949 Act provide, with respect to the 1987 crop of wheat, that if the Secretary estimates, not later than June 1, 1986, that the quantity of wheat on hand in the United

States on the first day of the marketing year for such crop (not including any quantity of wheat of such crop) will be: (1) More than 1,000,000,000 bushels, the Secretary shall provide for an ALP under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not less than 20 percent but not more than 27 1/2 percent; or (2) 1,000,000,000 bushels or less, the Secretary may provide for an ALP under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not more than 20 percent.

If a wheat ALP is announced, such limitation shall be achieved by applying a uniform percentage reduction to the wheat crop acreage base for the crop for each wheat-producing farm. Producers who knowingly produce wheat in excess of the permitted wheat acreage for the farm shall be ineligible for wheat loans, purchases, and payments with respect to wheat produced on that farm. An acreage on the farm shall be devoted to conservation uses determined by dividing: (1) The product obtained by multiplying the number of acres required to be withdrawn from the production of wheat times the number of acres planted to such commodity by (2) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary. This acreage is referred to as "reduced acreage".

The quantity of wheat on hand on June 1, 1987, is currently estimated to exceed 1.0 billion bushels and may approach or exceed 2.0 billion bushels. Based upon such estimates the Secretary would be required to implement an ALP of 20.0–27.5 percent.

With program participation estimated to be at least 85 percent or more of the total wheat acreage base established for the 1987 crop year, the acreage which would be reduced acreage under a 20-percent ALP would be about 15 million acres. Under a 27.5 percent ALP, the acreage which would be reduced acreage would be about 5 million acres greater. Therefore, with a 27.5-percent ALP in effect, total wheat supplies would likely be decreased 150–180 million bushels more than under a 20-percent program. If a 27.5 percent ALP is implemented, carryout stocks are expected to decline moderately but on June 1, 1988 such stocks would still be well above the 1.0 billion bushel trigger level which is applicable to the implementation of an ALP of 30 percent for a 1988 crop of wheat.

Comments are requested as to the percentage level, if any, at which an

ALP should be implemented for the 1987 crop of wheat.

e. Land Diversion Program: Section 107D(f)(5)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of wheat, whether or not an ALP, set-aside program, or marketing quotas for wheat are in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of wheat to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

Any additional acreage reduction under a land diversion program (LDP) would be at a producer's option. If such a program were implemented, payments for such diversion would be in cash or commodity certificates.

Comments are requested with respect to the need for an optional paid LDP as well as the provisions of such program.

f. Inventory Reduction Program (IRP): Section 107D(g) of the 1949 Act provides that the Secretary may, for the 1987 crop of wheat, make payments available to producers who: (1) Agree to forgo obtaining a loan or purchase agreement; (2) agree to forgo receiving deficiency payments; and (3) do not plant wheat for harvest in excess of the crop acreage base reduced by one-half of any acreage required to be diverted from production under the announced acreage limitation program. Such payments shall be made in the form of wheat and, subject to the availability of such wheat, which is owned by CCC. Payments under this program shall be determined in the same manner as established with respect to the marketing loan program.

Accordingly, it is proposed that implementation of this program be

dependent on whether a marketing loan program is also instituted. Comments are requested on whether the IRP should be implemented for the 1987 crop of wheat.

g. *Commodity Certificates*: Section 107E of the 1949 Act provides that, in making in-kind payments under any wheat program, the Secretary may (1) acquire and use commodities that have been pledged to the CCC as security for price support loans, including loans made to producers under the farmer-owned reserve program and (2) use other commodities owned by the CCC.

The Secretary may make in-kind payments: (1) By delivery of the commodity to the producer at a warehouse or other similar facility, as determined by the Secretary; (2) by the transfer of negotiable warehouse receipts; (3) by the issuance of certificates which CCC shall redeem for a commodity; and (4) by such other methods as the Secretary determines appropriate to enable the producer to receive payments in an efficient, equitable, and expeditious manner so as to ensure that the producer receives the same total return as if the payments had been made in cash.

Commodity certificates were issued with respect to the 1986 price support and production adjustment programs. The use of such certificates included payment of all diversion payments and a portion of the advance deficiency payments. The Secretary proposes to use commodity certificates with respect to the 1987 wheat program, subject to the availability of commodities pledged as collateral for CCC loans, and CCC-owned stocks.

Accordingly, comments are requested with respect to the use of commodity certificates in making payments under the 1987 wheat program.

h. *Farmer-owned Reserve (FOR) Program*: Section 110 of the 1949 Act provides that, effective with the 1986 crop of wheat, the Secretary shall formulate and administer a program under which producers will be able to store wheat when in abundant supply, extend the time period for its orderly marketing, and provide for adequate, but not excessive, carryover stocks in order to ensure a reliable supply. The Secretary is required to establish safeguards to assure that wheat held under the program shall not be utilized in any manner to unduly depress, manipulate, or curtail the free market.

Such a program is required to be established whenever the total quantity of wheat stored under such program is less than 17 percent of the estimated total domestic and export usage during the then current marketing year. In

establishing such a program, original or extended price support loans for wheat are to be made available under terms and conditions designed to encourage participation by producers. Loans made in accordance with this program shall be made at such level of support as the Secretary determines appropriate, but not less than the then current level of support available under the wheat program. The program may provide for: (1) Repayment of such loans in not less than three years, with extensions as warranted by market conditions; (2) payments to producers for storage in such amounts and under such conditions as the Secretary determines appropriate to encourage producers to participate in the program; (3) a rate of interest not less than the rate charged CCC by the United States Treasury, except the Secretary may waive or adjust such interest as the Secretary deems appropriate to effectuate the purposes of section 110; (4) recovery of amounts paid for storage, and for the payment of additional interest or other charges if such loans are repaid by producers when the total amount of wheat in storage under this program is below the maximum limits for such storage and the market price for wheat is below the higher of: (i) 140 percent of the nonrecourse loan rate for wheat or (ii) the established "target" price; and (5) conditions designed to induce producers to redeem and market the wheat securing such loans without regard to the maturity dates thereof whenever the Secretary determines that the market price for the commodity has attained the higher of: (i) 140 percent of the nonrecourse loan rate for the commodity or (ii) the established price for such commodity.

The rate of interest applicable to loans made under this program shall be not less than the rate of interest charged CCC by the United States Treasury. However, the Secretary may: (1) Waive or adjust the rate of interest to effectuate the purposes of the program and (2) increase the applicable rate of interest as determined appropriate to encourage the orderly marketing of wheat securing such loans if the market price for wheat exceeds the higher of 140 percent of the nonrecourse loan rate or the established "target" price.

The Secretary may require producers to repay the principal amount of loans obtained under this program, plus accrued interest and other related charges, prior to the maturity date of such loans, if the Secretary: (1) Determines that emergency conditions exist which require that wheat be made available to meet urgent domestic or international needs and (2) reports such

determination to the President, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives at least fourteen days before taking such action.

Announcement of the terms and conditions of the program are to be made as far in advance of making loans as practicable and shall specify the quantity of wheat to be stored under the program which is determined appropriate to promote the orderly marketing of wheat. Prior to the harvest of each crop of wheat upper limits on the total quantity of wheat that may be stored under such program during the marketing year for such crop are to be established. The upper limit for wheat shall not exceed 30 percent of the estimated total domestic and export usage during the marketing year for such crop. Such upper limit may be increased, but not in excess of 110 percent, if the Secretary determines that the higher limits are necessary to achieve the purposes of the program.

Based on estimated total domestic and export usage of wheat for the 1986/87 marketing year of about 2.1-2.3 billion bushels, the minimum FOR quantity would be 355-390 million bushels and the maximum quantity would be 630-690 million bushels. As of March 19, 1986, the quantity of wheat in the FOR was 500.2 million bushels. Based upon: (1) The ability of producers to place wheat pledged as collateral for maturing 1985 price support loans in the FOR; (2) removals from the FOR in accordance with the 1986 price support and production adjustment programs and; (3) FOR contract maturities, it is estimated that the FOR quantity on hand during the 1986/87 marketing year will be between the statutory minimum and maximum levels. Accordingly, the Secretary proposes not to permit entry of maturing 1986 and 1987 crop wheat price support loans into the FOR if the estimated FOR quantities during the 1986/87 and 1987/88 marketing years are above the statutory minimum.

Comments on FOR program provisions are requested including whether 1986 and 1987 crop wheat regular CCC price support loans should be permitted entry into the FOR.

i. *Wheat Export Certificate Program*: Section 107F(a)(1) of the 1949 Act provides that the Secretary may establish a program for the 1987 crop of wheat to provide incentives for the export of wheat from private stocks. Under such a program, export certificates would be issued to producers who comply with the terms and conditions of the 1987 wheat price

support and production adjustment program. Each certificate would bear a monetary amount and specify a quantity of wheat. The aggregate quantity of wheat specified on the certificate would be equal to the quantity which is determined by multiplying: (1) The wheat acreage planted on the farm by, (2) the farm program payment yield by, (3) an export production factor. Such factor for a crop is determined by dividing: (1) The estimated quantity of wheat harvested domestically that will not be used domestically and will be available for export less the portion of the crop expected to be added to carryover stocks by (2) the estimated quantity of the crop which will be harvested domestically.

Wheat export certificates would be distributed among eligible producers in a manner which would ensure that each producer receives certificates having an aggregate face value representing an equal rate of return per bushel of wheat produced. In determining such rate of return, regional variations in costs incurred to market wheat including transportation costs shall be considered.

The face value of the export certificates shall be redeemed by the Secretary for cash or a quantity of the commodity involved having a current fair market value equal to the amount of the face value of the certificate upon presentation of such certificate by a holder who exports the quantity of wheat shown on the certificate.

The total value of the wheat export certificate would be equal to an amount which is not less than the product determined by multiplying: (1) 21 cents per bushel by, (2) the acreage planted for harvest by 1987 wheat program

participants by, (3) the average of program yields for the crop.

The following example illustrates how a wheat export certificate value and quantity would be determined:

1. Estimated Total Production (mil. bu.).....	2,400
2. Estimated Quantity Available for Export (mil. bu.).....	1,200
3. Participating Acreage for Harvest (mil. ac.).....	50
4. Program Yield (bu/ac).....	33.5
5. Export Production Factor [#2 ÷ #1] (%).....	.5000
6. Total Certificate Quantity [#3 × #4 × #5] (mil. bu.).....	838
7. Total Certificate Value [\$0.21 × #3 × #4] (mil. \$).....	352
8. Certificate Value Per Bushel [#7 ÷ #6] (\$/bu.).....	0.42

With the above example, a producer participating in the 1987 wheat program would be issued export certificates in a quantity which is equal to a quantity which is determined by multiplying: (1) The producer's program acreage by, (2) program yield by, (3) the export production factor. The monetary value of these certificates would be the bushel quantity times the unit value (\$0.42). These certificates would be made available after the marketing of such quantity of wheat. If this program is implemented, it is expected that wheat accompanied by an export certificate would be traded at a premium to noncertificate wheat.

Comments are requested on whether an export certificate program should be implemented for the 1987 crop of wheat.

j. *Special Wheat Grazing and Hay Program:* Section 109 of the 1949 Act provides that the Secretary may implement for the 1987 crop of wheat a

special grazing and hay program. Under this special program, a producer is permitted to designate a portion of the acreage on the farm intended to be planted to wheat, feed grains or upland cotton for harvest, in an amount not to exceed 40 percent of such acreage or 50 acres, whichever is greater. The designated acreage must be planted to wheat and used by the producer for grazing or hay. Payments under this program would be determined by multiplying: (1) The special program acreage by, (2) the farm program payment yield by, (3) a fair and reasonable rate of payment.

Comments are requested on whether a special grazing and hay program should be implemented for the 1987 crop of wheat and, if so, the rate of payment.

k. *Other Related Provisions:* A number of other determinations must be made in order to carry out the wheat loan and purchase programs such as: (1) Commodity eligibility; (2) premiums and discounts for grades, classes, and other qualities; (3) establishment of county loan and purchase rates; and (4) such other provisions as may be necessary to carry out the programs.

Consideration will be given to any data, views and recommendations that may be received relating to these issues.

Authority: Secs. 107C, 107D, 107E, 107F, 109, and 110 of the Agricultural Act of 1949, as amended; 99 Stat. 1446, 1383; as amended, 1448, 91 Stat. 950, as amended, 951, as amended (7 U.S.C. 1445b-2, 1445b-3, 1445b-4, 1445b-5, 1445d and 1445e).

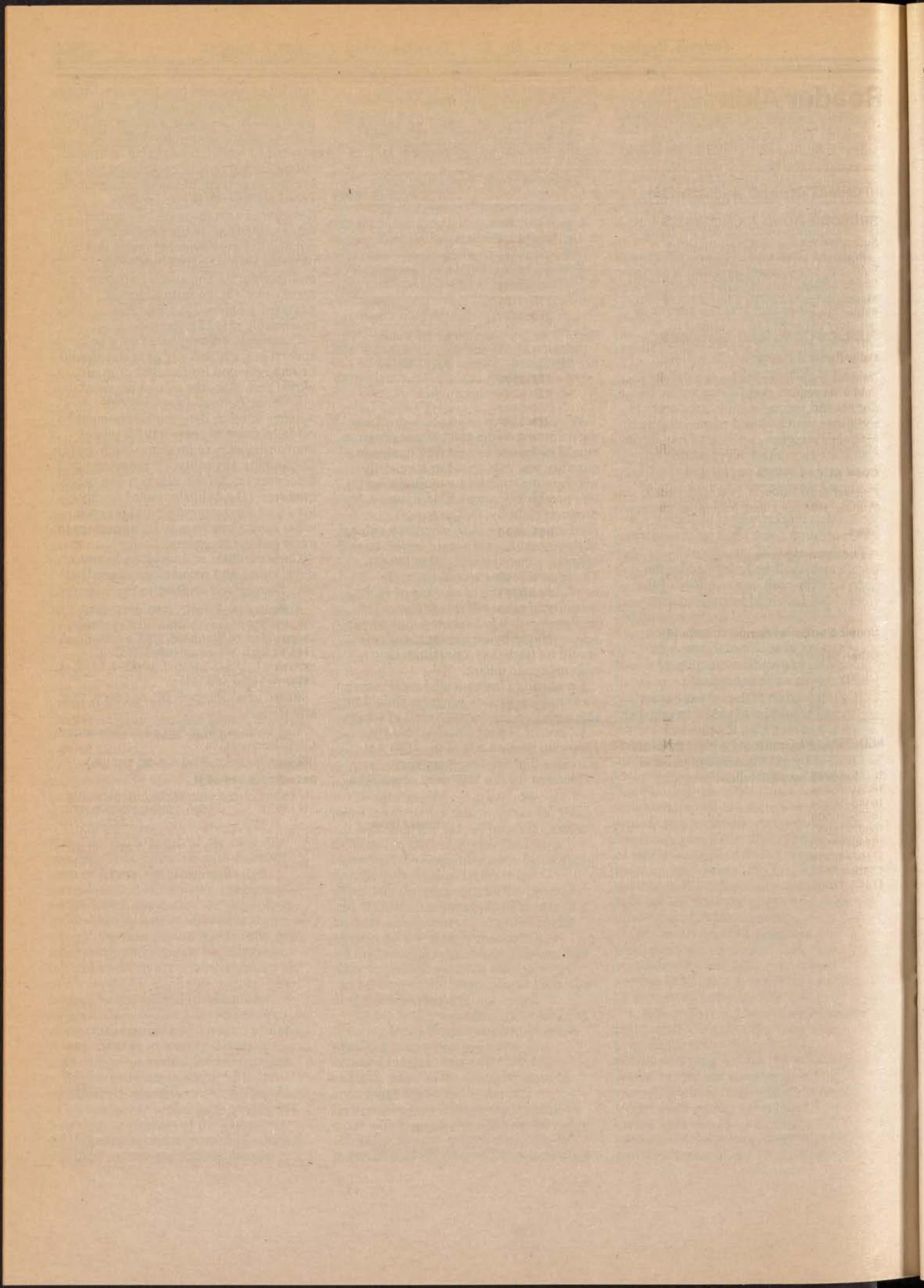
Signed at Washington, DC, on May 9, 1986.

Milt Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

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H.J. Res. 569/Pub. L. 99-292

To designate May 8, 1986, as "Naval Aviation Day." (May 8, 1986; 100 Stat. 416; 1 page) Price: \$1.00

S.J. Res. 264/Pub. L. 99-293

Designating April 28, 1986, as "National Nursing Home Residents Day." (May 8, 1986; 100 Stat. 417; 1 page) Price: \$1.00

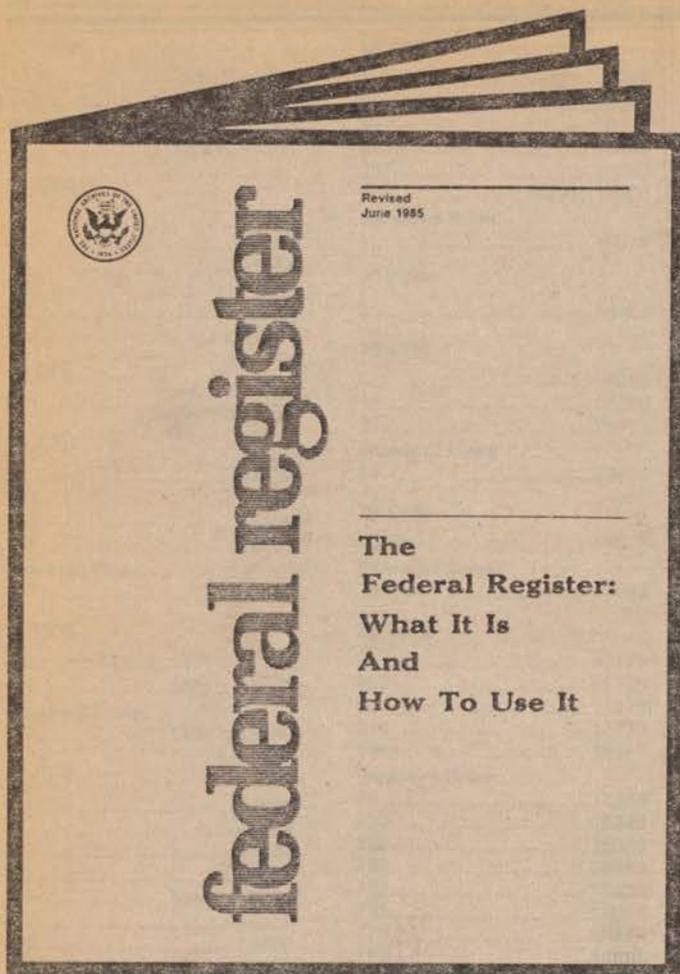
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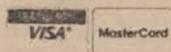
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