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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

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

WASHINGTON, DC

WHEN: July 11; at 9 am.

WHERE: Office of the Federal Register,
First Floor Conference Room,
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RESERVATIONS: Abram Primus 202-523-3419
Ina Masters 202-523-3419

SEATTLE, WA

WHEN: July 22; at 1:30 pm.

WHERE: North Auditorium,
Fourth Floor, Federal Building,
915 2nd Avenue, Seattle, WA.

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Tacoma	206-383-5230
Portland	503-221-2222

SAN FRANCISCO, CA

WHEN: July 24; at 1:30 pm.

WHERE: Room 2007, Federal Building,
450 Golden Gate Avenue,
San Francisco, CA.

RESERVATIONS: Call the San Francisco Federal Information Center, 415-556-6600

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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

Commodity Credit Corporation

7 CFR Part 1421

Loan and Purchase Programs: Grain, etc.; Warehouse Approval Standards

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The proposed rule published in the **Federal Register** on November 21, 1985 (50 FR 48094), which would amend the regulations found at 7 CFR Part 1421 to make technical revisions for clarity and to provide for changes with respect to acceptable moisture levels for warehouse-stored corn, sorghum, and soybeans pledged as collateral in accordance with the 1986 and subsequent crop year Commodity Credit Corporation (CCC) price support loan and purchase programs is adopted as a final rule except for the proposed changes in acceptable moisture levels. Based upon the comments received with respect to the proposed rule and a further review by CCC of the issues addressed in the proposed rule, CCC has determined current maximum acceptable moisture levels for corn, sorghum, and soybeans pledged as collateral for warehouse-stored price support loans will not be reduced at this time. All other provisions of the proposed rule are adopted without change.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013; (202) 447-8480.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." It has been determined that provisions of this final rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this final rule applies are: 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 final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determned by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

The program/activity 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).

A rule proposing to amend the regulations found at 7 CFR Part 1421 was published in the **Federal Register** on November 21, 1985, at 50 FR 48094. The proposed rule provided for a 60-day comment period.

The Department received 128 comments with respect to the proposed rule. The comments received are on file and available for public inspection in Room 3619—South Building, 14th and Independence Avenue, SW., Washington, DC 20013.

The following is a summary of the comments and issues raised with respect to the proposed rule:

Comments on Program Provisions

Acceptable Moisture Levels for Warehouse-Stored Corn, Sorghum, and Soybeans

Provisions of the Proposed Rule. The proposed rule provided that, effective for the 1986 and subsequent crops, warehouse-stored corn pledged as collateral for CCC price support loans, as authorized by 7 CFR Part 1421, must not contain over 14.0 percent moisture. Similarly, the rule proposed to amend 7 CFR Part 1421 to reduce the maximum acceptable moisture levels for 1986 and subsequent crops of sorghum and soybeans pledged as collateral for warehouse-stored CCC price support loans from 14.0 percent to 13.0 percent. The reductions in the maximum acceptable moisture levels for warehouse-stored corn, sorghum, and soybeans were proposed to more accurately reflect commercial warehouse storage practices.

Comments. A total of 128 comments were received with respect to the proposed rule. Seven respondents supported the proposed rule with respect to reducing maximum acceptable moisture levels for warehouse-stored corn, sorghum, and soybeans. The 121 remaining respondents opposed the proposed moisture level reductions.

Discussion of Comments. Respondents commenting in favor of the proposed rule suggested the reductions in moisture levels were consistent with sound storage management practices. These respondents argued that lowering moisture levels would help preserve grade quality, allow better control of moisture related problems, and aid in reestablishing export markets previously lost because of customers receiving unacceptable quality grain as a result of high moisture conditions. The respondents opposing the proposal stated that the moisture level reductions would mean additional drying expenses for producers. Further, these respondents also stated that, with respect to grain which is dried to the proposed moisture levels, producers would experience a two percent reduction in the total quantity of grain which is dried for each one percent moisture level reduction because of shrinkage and the increased quantity of cracked kernels and foreign material. In view of current economic conditions

facing producers, respondents questioned the merits of proposed changes in the moisture levels. Some respondents reported encountering no problems in maintaining the quality of grain stored at the current maximum moisture levels. Finally, several respondents suggested that, in lieu of reducing maximum moisture levels, CCC should provide for a reasonable discount schedule to control moisture problems which CCC may encounter when CCC takes title to commodities which have been pledged as collateral for a CCC price support loan.

Conclusion. After careful consideration of the comments received, CCC has determined that at this time the interests of producers and CCC are adequately protected under current requirements regarding moisture levels which are set forth in the regulations.

Accordingly, the proposed regulations published at 50 FR 48094 which would have amended 7 CFR Part 1421 are adopted as a final rule except that the proposed amendments with respect to the levels of acceptable moisture content are deleted and the current requirements with respect to acceptable moisture content are retained. In addition, the authority citation has been revised to correct for errors.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Bonds, Warehouses.

Final Rule

PART 1421—[AMENDED]

Accordingly, 7 CFR Part 1421 is amended as follows:

1. The authority citation for Part 1421 continues to read as follows:

Authority: Secs. 4 and 5; 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b, 714c); Secs. 101, 105C, 107D, 110, 201, 301, 401, 405; 63 Stat. 1051, as amended, 99 Stat. 1395, as amended, 1383, as amended, 1221, as amended, 91 Stat. 951, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1444e, 14445b–3, 1445e, 1446, 1447, 1421, 1425).

2. In § 1421.91, paragraph (c) is revised to read as follows:

§ 1421.91 Eligible corn.

* * * * *

(c) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, corn must meet the requirements specified in paragraphs (a) and (b) of this section. Such corn must also grade No. 3 or better or, on the factor of test weight only, No. 4 or better. In addition, such corn must not grade "Weevily" and must not have moisture over 15.5 percent.

* * * * *

3. Section 1421.93 is revised by designating the currently undesignated paragraph as paragraph (a), by redesignating current paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and revising newly redesignated paragraph (b) to read as follows:

§ 1421.93 Determination of quantity.

* * * * *

(b) *In warehouse.* The quantity of corn on which a warehouse-stored loan shall be made and the quantity delivered to or acquired by CCC in an approved warehouse shall be the net bushels specified on the warehouse receipts or, if applicable, on the supplemental certificate. If the corn has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or, if applicable, the supplemental certificate, shall represent the quantity after drying or blending, and such quantity shall reflect a minimum shrink in the receiving weight, excluding dockage, of 1.2 times the percentage difference between the moisture content of the corn, when received, and 15.5 percent.

* * * * *

4. Section 1421.94 is revised by designating the currently undesignated paragraph and paragraph (a), by redesignating paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), (d), and (e), respectively, and revising newly redesigated paragraph (d) to read as follows:

§ 1421.94 Warehouse receipts.

* * * * *

(d) *Where warehouse receipt shows "Weevily," excess moisture, or both.* (1) If a warehouse receipt tendered as security for a loan indicates that the corn grades "Weevily" or contains over 15.5 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate in order for the corn to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(i) When the warehouse receipt shows "Weevily" and the corn has been conditioned to correct the "Weevily" condition, the supplemental certificate must show the same grade without the "Weevily" designation and the same grading factors and quantity as shown on the warehouse receipt.

(ii) When the warehouse receipt shows a moisture content of over 15.5 percent and the corn has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending the corn to a moisture of not over 15.5 percent. Such quantity also shall reflect a drying or blending shrink as specified in § 1421.93(b).

(2) The supplemental certificate issued by the warehouseman must provide that no lien for processing the corn represented by the supplemental certificate will be asserted by the warehouseman against CCC or any subsequent holder of the warehouse receipt and that the grade, grading factors, and quantity shown on the supplemental certificate shall supersede the entries for such items shown on the warehouse receipt.

* * * * *

5. In § 1421.211, paragraph (b) is revised to read as follows:

§ 1421.211 Eligible Sorghum.

* * * * *

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the sorghum must meet the requirements specified in paragraph (a) of this section. Such sorghum must also grade No. 4 or better and may carry the special grade designation "Smutty". The sorghum must not grade "Weevily" and must not have moisture over 14.0 percent.

6. Section 1421.213 is revised by designating the currently undesignated paragraph as paragraph (a), by redesignating current paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and revising newly redesignated paragraph (b) to read as follows:

§ 1421.213 Determination of quantity.

* * * * *

(b) *In warehouse.* The quantity of sorghum on which a warehouse-stored loan shall be made and the quantity delivered to or acquired by CCC in an approved warehouse shall be the net weight specified on the warehouse receipt or, if applicable, on the supplemental certificate. If the sorghum has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or, if applicable, on the supplemental certificate shall represent the quantity after drying or blending, and such quantity shall reflect a minimum shrink in the receiving weight, excluding dockage, of 1.2 times the percentage difference between the moisture content of the sorghum, when received, and 14.0 percent.

* * * * *

7. Section 1421.214 is revised by designating the currently undesignated paragraph as paragraph (a), by redesignating current paragraphs (a), (b), (c), (d), and (e) as paragraphs (b), (c), (d), (e), and (f), respectively, and revising newly redesignated paragraph (d) to read as follows:

§ 1421.214 Warehouse receipts.

* * * * *

(d) *Where warehouse receipt shows "Weevily," excess moisture, or both.* (1) If a warehouse receipt tendered as security for a loan indicates that the sorghum grades "Weevily" or contains over 14.0 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate in order for the sorghum to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(i) When the warehouse receipt shows "Weevily" and the sorghum has been conditioned to correct the "Weevily" condition, the supplemental certificate must show the same grade without the "Weevily" designation and the same grading factors and quantity as shown on the warehouse receipt.

(ii) When the warehouse receipt shows moisture content of over 14.0 percent and the sorghum has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending the sorghum to a moisture content of not over 14.0 percent. Such quantity also shall reflect a drying or blending shrink as specified in § 1421.213(b).

(2) The supplemental certificate issued by the warehouseman must provide that no lien for processing the sorghum represented by the supplemental certificate will be asserted by the warehouseman against CCC or any subsequent holder of the warehouse receipt and the grade, grading factors, and the quantity shown on the supplemental certificate shall supersede the entries for such items shown on the warehouse receipt.

* * * * *

8. In § 1421.366, paragraph (b) is revised to read as follows:

§ 1421.366 Eligible Soybeans.

* * * * *

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the soybeans must meet the requirements specified in paragraph (a) of this section. Such soybeans must also grade No. 4 or better, must not grade "Weevily" and must not have moisture over 14.0 percent.

9. Section 1421.368 is revised by designating the currently undesignated paragraph as paragraph (a), by redesignating current paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and revising newly redesignated paragraph (b) to read as follows:

§ 1421.368 Determination of Quantity.

* * * * *

(b) *In warehouse.* The quantity of soybeans on which a warehouse-stored loan shall be made and the quantity delivered to or acquired by CCC in an approved warehouse shall be the net bushels specified on the warehouse receipt or, if applicable, on the supplemental certificate. If the soybeans have been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or, if applicable, on the supplemental certificate shall represent the quantity after drying or blending, and such quantity shall reflect a minimum shrink in the receiving weight of 1.2 times the percentage difference between the moisture content of the soybeans, when received, and 14.0 percent.

10. Section 1421.369 is revised by designating the currently undesignated paragraph as paragraph (a), by redesignating the current paragraphs (a) (b), (c), and (d) as paragraphs (b), (c), (d), and (e), respectively, and revising newly redesignated paragraph (d) to read as follows:

§ 1421.369 Warehouse receipts.

* * * * *

(d) *Where warehouse receipt shows "Weevily," excess moisture, or both.* (1) If a warehouse receipt tendered as security for a loan indicates that the soybeans grade "Weevily" or contain over 14.0 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate in order for the soybeans to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(i) When the warehouse receipt shows "Weevily" and the soybeans have been conditioned to correct the "Weevily" condition, the supplemental certificate must show the same grade without the "Weevily" designation and the same grading factors and quantity as shown on the warehouse receipt.

(ii) When the warehouse receipt shows a moisture content of over 14.0 percent and the soybeans have been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending the soybeans to a moisture content of not over 14.0 percent. Such quantity also shall reflect a drying or blending shrink as specified in § 1421.368(b).

(2) The supplemental certificate issued by the warehouseman must provide that no lien for processing the soybeans represented by the supplemental certificate will be asserted by the warehouseman against CCC or any subsequent holder of the warehouse receipt and that the grade, grading factors, and the quantity shown on the supplemental certificate shall supersede the entries for such items shown on the warehouse receipt.

* * * * *

Signed at Washington, DC, on June 12, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

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BILLING CODE 3410-05-M

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7 CFR Part 1446

Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This Interim Rule sets the terms and conditions under which producers acting through area marketing associations may receive price support on eligible peanuts through warehouse storage loans for the 1986 through 1990 crops of peanuts. These regulations are necessary for the administration of the price support program for peanuts. The peanut program is conducted in accordance with the provisions of the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended.

DATES: Interim rule effective June 17, 1986; comments must be received on or before August 18, 1986.

ADDRESSES: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC. 20013. All written submissions made pursuant to this notice will be made available for public inspection in Room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David Kincannon (ASCS), 202-382-

0152. The Final Regulatory Impact Analysis will be available upon request.

SUPPLEMENTARY INFORMATION: This Interim Rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512-1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more: (2) a major increase in costs or prices for consumers, industries, Federal, State or local government agencies, or geographical 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. The information collection requirements contained in this regulation and information requests authorized by the regulation have been reviewed and approved by OMB under OMB Number 0560-0024.

The title and number of the Federal assistance program to which this rule applies are: 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 rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice or proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity 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).

In order that the rule be effective before the statutory final date for contracting peanuts, it has been determined that this rule shall be issued first as an interim rule. This interim rule is effective June 17, 1986. Comments will be received for 60 days after the publication of this document in the **Federal Register.** This allows handlers and producers to know how the provisions of these regulations will impact on their eligibility for price support, on contracts for export or crushing, and on the sale of loan stock under the "immediate buyback" provision. Also, the requirements for providing financial guarantees and evidence of adequate facilities and assets must be finalized before the beginning of the marketing season to enable handlers and producers to make any financial arrangements and secure any documentation, including reports that may be required under the regulations as promulgated.

The Food Security Act of 1985 (the 1985 Act) which was enacted on December 23, 1985, amended the Agricultural Adjustment Act of 1938 (the 1938 Act) and the Agricultural Act of 1949 (the 1949 Act) to make significant changes in the administration of the peanut price support program effective for the 1986 through 1990 crops of peanuts. The changes addressed by this interim rule apply with regard to warehouse-stored peanut loans and handler operations, and most significantly affect the handling of contract additional peanuts and the distribution of marketing pools by area marketing associations.

The specific changes made in the regulations are summarized as follows:

Date For Filing Contracts

Section 359(q)(1) of the 1938 Act provides that handlers may contract with peanut producers for the purchase of additional peanuts for crushing, export or both, and requires that such contracts be completed and submitted for approval "before August 1" of the year in which the crop is produced. This means that contracts must be submitted to the county office no later than July 31 or by the end of the previous workday if July 31 falls on Saturday or Sunday. The rule clarifies that when July 31 falls on a weekend, the contracting deadline will be the last worday preceding July 31.

Penalties, Penalty Rate

Under section 359 of the 1938 Act and this rule, handlers are liable for penalties equal to 140 percent of the quota support rate for program violations. This represents an increase from the 120 percent applicable for violations in prior crop years. Penalties apply under this rule and section 359 of the 1938 Act when a handler:

(1) Markets peanuts for domestic edible use that are larger in quantity or higher in grade or quality than the peanuts that could reasonably be produced from the quantity of peanuts having the grade, kernel content and quality of the quota peanuts acquired by such handler; or

(2) Fails to comply with regulations issued by the Secretary governing the disposition and handling of additional peanuts.

Section 359(p)(6) of the 1938 Act specifically provides that:

> . . . If any additional peanuts are reentered into the United States in commercial quantities as determined by the Secretary, the importer thereof shall be subject to a penalty at a rate equal to 140 percent of the loan level for quota peanuts or the quantity of peanuts reentered. . . .

This rule provides for a penalty against the importer of contract additional peanuts or the person receiving such reentered peanuts or products.

Section 359(s)(5) of the 1938 Act provides for reducing penalties against a handler if it is found that the violation on which the penalty is based was minor or inadvertent, and that reduction of the penalty will not impair the operation of the peanut program, except that the amount of any penalty imposed that resulted from the failure to export contract additional peanuts may not be reduced by the Secretary. This rule implements these provisions as well.

Schemes and Devices

The rule also provides for penalties to correct for any scheme or device designed to, or having the effect of, circumventing the provisions of regulations.

Financial Guarantees

Section 359(p)(3) of the 1938 Act requires the handler to submit to the Secretary adequate financial guarantees to ensure the handler's compliance with the obligation to export peanuts. This prevents a handler from gaining an economic advantage over another handler or cause an increase in costs to the Commodity Credit Corporation (CCC) or both by not complying with the requirements to export peanuts acquired for that purpose. In developing these regulations, two issues were addressed:

(1) What type of financial guarantees shall be required; and

(2) What amount shall be deemed as "adequate".

Types of guarantees. Several types of guarantees are possible. One possibility is for each handler to be bonded by the amount of the expected penalty, i.e,. the penalty rate, times the quantity of additional peanuts contracted. Another choice would be a letter of credit for the same amount. A letter of credit was used for pre-1986 crops to guarantee that peanuts were exported as replacements for additional peanuts approved for use in the domestic market. Therefore, the use of a letter of credit is generally

understood and has been accepted by handlers as a means of providing financial guarantees. In addition, CCC believes that handlers would have difficulty acquiring a bond in the necessary amounts and that they would be administratively cumbersome for CCC. Accordingly, this rule uses a letter of credit as the means for handlers to provide financial guarantees of performance.

Adequacy. The term "adequate" implies a quantitative determination of an amount that will assure proper performance. Accordingly, the adequacy of a guarantee will depend both on the quantity of peanuts placed under contract and the amounts of potential profit for noncompliance, e.g., the difference between the value in the domestic market less the value of the contract additional peanuts. During normal marketing seasons, the market value could be approximated by the additional support rate.

Therefore, this rule requires that application for a handler number be accompanied by a letter of credit in amount equal to the difference between the quota support rate and the additional support rate, times 10 percent of the quantity of additional peanuts the handler expects to contract in each marketing area. This will leave most of the handler's credit line open and available for operating expenses and for purchase of peanuts, while providing a sufficiently high level of protection. Before the county office could approve contracts, a handler would be required to amend the letter of credit to cover not less than 10 percent of the quantity actually contracted.

For handlers electing physical supervision, it has been determined that the 10 percent rule will be an adequate financial guarantee since violations are more easily discoverable with physical supervision.

Handlers electing the nonphysical supervision would be required to amend the letter of credit to cover not less than 25 percent of the amount of additional peanuts contracted before such contracts could be approved. In addition, over the course of the marketing year, such handlers would be required to increase the letter of credit to an amount set by a schedule of increasing percentages of the handler's export obligation (see discussion of nonphysical supervision below).

Accordingly, subject to increases in cases involving handlers choosing nonphysical supervision, the following schedule will apply:

LETTER OF CREDIT REQUIRED FOR HANDLERS

Event requiring letter of credit	Base amount to be covered by letter of credit	Rate
Handler registration	10% of estimated amount of peanuts to be contracted.	Difference between quota support rate and additional support rate.
Contract approval—handler selecting physical supervision.	10% of amount of peanuts contracted.	Do.
Contract approval—handler selecting nonphysical supervision.	25% of amount of peanuts contracted.	Do.

Nonphysical Supervision

Section 359(p) of the 1938 Act provides that the handling and disposal of additional peanuts be supervised by agents of the Secretary or area marketing associations. However, physical supervision requirements may be waived if the handler agrees in writing, prior to any handling or disposition of additional peanuts, to comply with the regulations issued by the Secretary with respect to handling and disposition of additional peanuts without physical supervision. The Act further requires that the regulations shall include, but need not be limited to, the following provisions:

. . . (i) Handlers of shelled or milled peanuts may export peanuts classified by type in all of the following quantities (less such reasonable allowance for shrinkage as the Secretary may prescribe);

(I) Sound split kernel peanuts in an amount equal to twice the poundage of such peanuts purchased by the handler as additional peanuts.

(II) Sound mature kernel peanuts in an amount equal to the poundage of such peanuts purchased by the handler as additional peanuts less the amount of sound split kernel purchased by the handler as additional peanuts.

(III) The remaining quantity of total kernel content of peanuts purchased by the handler as additional peanuts and not crushed domestically.

(ii) Handlers shall ensure that any additional peanuts exported are evidenced by onboard bills of lading, other appropriate documentation as may be required by the Secretary, or both.

(iii) If a handler suffers a loss of peanuts as a result of fire, flood, or any other condition beyond the control of the handler, the portion of such loss allocated to contracted additional peanuts shall not be greater than the portion of the handler's total peanut purchases for the year attributable to contracted additional peanuts purchased for export by the handler during such year. . . .

This rule permits nonphysical supervision under those circumstances.

To that end, it is provided in the rule that the terms "sound mature kernel peanuts" (SMK peanuts) and "sound split kernel peanuts" (SS peanuts) as defined and determined by the Federal State Inspection Service shall apply. The rule defines "total kernel content" (TKC) as the total peanut kernels consisting of sound mature kernels (SMK), sound splits (SS), damaged kernels, other kernels, and loose shelled kernels (LSK) as used by the Federal State Inspection Service when determining the kernel content of a lot of farmers stock peanuts to be entered on the ASCS–1007. "TKC basis" will have the same meaning as "nonphysical supervision basis" and "other kernels" (OK) shall include all kernels which are not SMK or SS.

Procedures are presently in place for determining the amount of SMK, SS, and OK peanuts in both the farmers stock peanuts delivered to the handler and the milled peanuts exported or disposed of otherwise. Under the rule, a handler's TKC export obligation will be determined from the kernel content as indicated on the ASCS–1007 which is completed whenever a producer delivers a lot of farmers stock peanuts to the handler. On the other hand, a handler's credits toward his export obligation will be determined from the FV–184–9/ Peanuts, Inspection Certificate, filled out by the Federal-State Inspection Service on each lot of shelled peanuts exported or disposed of in accordance with the provisions of this rule. This rule allows the total quantity of a lot of U.S. No. 1 Grade or better to apply as SMK credits. For U.S. Splits Grade the total quantity of the lot should apply as SS credits. For lots meeting the Marketing Agreement definition of "Runner", "Spanish" or "Virginia with splits", the quantity of the lot, less the quantity attributable to splits may be credited against the SMK obligation; the quantity attributable to splits may be credited against the obligation for splits. Peanuts meeting the grade requirements for "Other Edible Quality" may be credited against the OK obligation.

Section 359(p)(2)(B) of the 1938 Act provides that the handler's export obligation is the total kernel content (TKC) purchased by the handler less such reasonable allowance for shrinkage as the Secretary may prescribe. However, any shrinkage in SMK peanuts would be negated under the nonphysical supervision provisions, since only the quantity of SMK peanuts in excess of the quantity of SS peanuts are required to be exported. This would have the same effect as allowing shrinkage in SMK peanuts equal to the percent of SS kernels relative to the amount of total kernels purchased from producers as contract additionals, provided the percentage of OK

purchased by the handler remains unchanged. Also, any loose shelled kernel (LSK) peanuts in the farmers stock peanuts purchased as additional peanuts will most likely be SMK or SS peanuts for shelled grades. This has the same effect, to the extent LSK peanuts make SMK or SS grades as shelled peanuts, as allowing a shrinkage equal to the percentage of LSK peanuts relative to the total kernels purchased by the handlers. For these reasons, this rule allows no shrinkage allowance when a handler is on a TKC basis.

When a handler of contract additional peanuts is supervised, the Department should discover fairly early if such peanuts are being used in the domestic market or are otherwise being handled or disposed of improperly. However, with nonphysical supervision, it is possible that the Department would not discover noncompliance until a year or more after the beginning of the marketing year. Accordingly, CCC risks are greater for the nonphysical supervision option. To cover this risk, this rule requires a larger letter of credit from handlers using nonphysical supervision. However, to minimize the financial burden that would be placed on such handlers, this rule requires that the letter of credit be increased in stages to allow the handler time to export or crush contracted additional peanuts.

The following is the schedule for an increasing letter of credit equal to the amount determined by the schedule times a rate equal to the difference between the quota and additional support rates.

Amount of letter of credit due on corresponding date =	Base to be covered by letter of credit X	Rate
Oct. 31	30% of amount of peanuts contracted less amount of export credits shown on association records.	Difference between quota support rate and additional support rate.
Nov. 30	55% of amount of peanuts delivered as contract additional peanuts less export credits (net export obligation).	Do.
Dec. 31	65% of net export obligation.	Do.
Jan. 31	80% of net export obligation.	Do.
Mar. 31	90% of net export obligation.	Do.
May 31	100% of net export obligation.	Do.
Aug. 31	100% of net export obligation.	140% of the quota support rate.

Under this schedule, the letter of credit is based on an increasing percentage of the net export obligation. A handler may show proof of export or disposition of additional peanuts in an amount that would not require the letter of credit to be increased. That is, by submitting proof of export or disposition in quantities great enough to cover the increasing percentages as determined by the schedule, a handler's original letter of credit might be adequate to cover the balance throughout the marketing season. The following example shows a handler contracting for 10,000 tons and taking delivery of 10,000 tons. Column 1 shows the increasing amount required by the proposed schedule to be covered by a letter of credit. Column 2 shows the amount of export credits that will enable the balance in Column 3 to remain at the 2,500 ton level.

	1—Amount on which letter of credit is required (tons)	2—Accumulated amount of export (tons)	3—Balance (tons)
July 31	25% of 10000 (2500)		
Oct. 31	30% of 10000 (3000)	500	2500
Nov. 30	55% of 10000 (5500)	3000	2500
Dec. 31	65% of 10000 (6500)	4000	2500
Jan. 31	80% of 10000 (8000)	5500	2500
Mar. 31	90% of 10000 (9000)	6500	2500
May 31	100% of 10000 (10000).	7500	2500

If the handler exports at the rate shown in column 2 above, the original letter of credit on 2,500 tons would cover the balance at each date on the schedule and the original letter of credit would not need to be increased. Should the handler fail to export on this schedule, the balance would be greater than the amount covered by the letter of credit and the letter of credit would have to be increased to cover the corresponding percentage of unexported peanuts or the next level of the schedule. If the handler fails to increase the letter of credit to the amount required by the schedule, the handler will be deemed to have relinquished the nonphysical supervision option, and further handling and disposition shall be supervised by agents of the association in accordance with the physical supervision requirements of this rule.

Subsequent to August 31, at the end of the marketing year, the amount covered by the letter of credit may be reduced to the extent that the balance which remains to be exported is less than the amount required to be coverd by a letter of credit. However, since this is the final date for export, this rule establishes that the rate used on that date to determine the amount of the letter of credit be increased to 140 percent of the quota support rate unless an extension to the following November 30 is requested and approved. Requiring a letter of credit on the balance of the export obligation times 140 percent of the quota support rate will assure that CCC is covered for the full amount of potential penalty should the handler fail to export or otherwise properly dispose of the remaining peanuts.

Physical Supervision

Section 359(p) of the 1938 Act provides a handler with the option of physical or nonphysical supervision and creates two systems for handling contract additonal peanuts. This makes the program more difficult to administer. Also, the Act has increased the 1986 national poundage quota to 2,711 million pounds, an increase of 511 million pounds from the 1985 level. Such increase in quota exposes CCC to greater potential loss should contract additional peanuts enter the domestic market thereby displacing the market for quota peanuts. Such displaced peanuts could become surplus CCC quota stocks which would cause considerable loss to CCC. Thus, certain changes are made in the regulations governing physical supervision. To prevent contract additional peanuts from entering the domestic market and to provide two methods of supervision for handlers of contract additonal peanuts this rule includes several provisions that should tighten the control of contract addtional peanuts with respect to physical supervision.

First, this rule requires that the exact peanuts graded out of storage as contract additional peanuts subsequently be exported or disposed of in accordance with the regulations applicable to physical supervision. Therefore, under the physical supervision option, this rule does not allow the substitution of contract additional peanuts into the domestic market for quota peanuts that are exported. Second, handlers operating under physical supervision are not allowed to contract additional peanuts to or from handlers operating under nonphysical supervision.

Immediate Buyback

Under regulations issued prior to 1986 a handler who lacked an export market or a good domestic market could, by mutual agreement with a producer, dissolve the contract and purchase the peanuts for domestic use under the immediate buyback provision. Handlers and producers could agree to utilize the "immediate buyback" provision and the handler could effectively share in the

producer's additional pool distribution. This practice allowed additional peanuts to be purchased for use in the domestic market at prices less than the quota support rate.

Section 359(q)(3) of the 1938 Act, requires that contracts for additional peanuts contain a specific prohibition against the disposition of contract additional peanuts for domestic edible or seed use. The effect of this requirement is to prohibit the displacement of quota peanuts in the domestic market with peanuts purchased under the immediate buyback provisions when such peanuts could have been delivered under a contract for export or crushing.

Section 359(r)(1) requires that regulations issued by the Secretary with respect to peanuts owned or controlled by CCC for domestic edible use must be written in such manner that will not result in substantially increased costs to CCC.

To accommodate the provisions of sections 359(q)(3) and (r)(1), this rule prohibits the use of the immediate buyback of a producer's additional peanuts until such producer has delivered the total quantity of peanuts contracted for export or crushing by that producer, and if there are two or more persons shown as producers on a farm, each producer's contracted peanuts must be delivered before any additional peanuts produced on such farm will be eligible for immediate buyback.

Lien Against Peanuts

Section 359 of the 1938 Act authorizes the Secretary to issue regulations setting forth procedures for marketing, handling and disposing of contract additional peanuts and establishes the penalties for failure to comply with such regulations. Further, section 359(s)(3) of the 1938 Act provides as follows:

> . . . Until the amount of the penalty provided by this section is paid, a lien on the crop of peanuts with respect to which such penalty is incurred, and on any subsequent crop of peanuts subject to farm poundage quotas in which the person liable for payment of the penalty has an interest, shall be in effect in favor of the United States . . . .

This rule applies a lien against any peanuts on which a penalty is due and in which a handler has an interest for the crop on which the penalty is due and on all subsequent crops.

Contract Price

Section 359(q)(3) of the 1938 Act requires that each contract contain the final price to be paid by the handler for the peanuts contracted for crushing or export. This prohibits contracts with "price-later" clauses, e.g., the final price paid for the peanuts being determined at a later date up to and including the date of harvest. Also, past experience has shown that handlers and producers have entered into contracts with the price set at nominal amounts such as one dollar. This rule considers that setting such a nominal amount is a "scheme and device" to bypass the firm price requirement. Accordingly, this rule makes ASCS approval of a contract dependent upon the price being stated in the contract as a percentage of the quota support rate and that it be stated so that a third party may determine the final price or determine that the price is established by the contract. This rule requires that the contract price for additional peanuts shall not be set at a level lower than the additional support rate for the type of peanuts contracted, in order to control supplementary agreements to alter the contract price.

Distribution of Pool Proceeds

Section 108B(3)(B) of the 1949 Act requires the Secretary to establish separate pools in each area marketing association for quota and additional peanuts by segregation. This eliminates pools by type, except that the Secretary is directed to establish separate pools for bright hull and dark hull Valencia peanuts produced in New Mexico. This rule establishes such pools.

The Act provides that net gains in each pool are to be distributed only to producers who placed peanuts in such pool, unless otherwise approved by the Secretary and shall be in proportion to the value of the peanuts placed in the pool. This rule authorizes that distribution of pool proceeds be made only to the producer participating in the pool and that assignment of pool distributions will not be permitted.

The 1949 Act as amended by the 1985 Act also makes several changes in the distribution of net gains in peanut marketing pools with respect to offsetting losses in loss pools with gains from profit pools but does not change the method for determining net gains in each of the pools. The gains from sale of additional peanuts for domestic use is deducted from the net gains in the additional pool and added to the net gains in the quota pool.

However, the amended 1949 Act requires that before any distribution of net gains on additional peanuts is made to a producer, the distribution is first reduced to the extent of any losses by CCC on quota peanuts placed under loan by the producer. The 1949 Act also requires that the proceeds due any producer from any pool shall be further reduced by any losses incurred with respect to peanuts transferred from an additional loan pool to a quota loan pool under the "disaster transfer" provisions of the regulations at 7 CFR Part 1446. Finally, the 1949 Act provides that if there are still losses in area quota pools (other than the "disaster transfer" losses) such losses will be offset by any gains in profit from pools in other production areas. However, the Act exempts the Valencia-type pools from this offset.

This rule implements those provisions.

Definitions

The Act introduced new terms which require definition. The most important definitions incorporated into the rule include the following:

(1) *Adequate assets and adequate facilities.* These terms were introduced in the Act with respect to the evidence handlers must submit to assure their proper disposition of contract additional peanuts. The definitions found in this rule are not intended to provide an exhaustive list of what may ultimately be considered as adequate assets or facilities in accordance with instructions issued by the Department, but rather are intended as general definitions that indicate the basic factors CCC will consider when making a determination of whether a person has adequate assets and facilities, and may be registered as a handler.

(2) *Commercial quantities.* The Act authorizes a penalty against an importer who reenters exported contract additional peanuts into the United States in commercial quantities as determined by the Secretary. Since peanuts are most commonly traded commercially in lot sizes of 44,092 pounds containing 400 bags which weigh, on the average, 110.23 pounds each, this rule defines "commercial quantity" with respect to any person importing peanuts to be 110 pounds or more. The defining of any quantity in excess of 110 pounds as a "commercial quantity" does not exempt any lesser quantity from the import quota limitation administered by the U.S. Customs Service.

Reorganization of Regulations

The organization of the regulations in this rule have been changed from that of 7 CFR 1446.50 through 1446.66 that applied to previous crops. In most cases this involved creating separate sections for subparagraphs in the previous regulations.

List of Subjects in 7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Warehouse.

Interim Rule

PART 1446—[AMENDED]

Accordingly, 7 CFR Part 1446 is amended by adding a new subpart to read as follows:

Subpart—Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops

General

Sec.
1446.70 General statement.
1446.71 Administration.
1446.72 Definitions

Basic Handler Operations

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1446.77 Handler approval.
1446.78 Peanut buyer card and buying point card.
1446.79 Examination of producers' marketing cards.
1446.80 Marketing card entries.
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1446.82 Collection of marketing penalties owed by a producer.
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1446.84 Recordkeeping requirements.
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1446.89 Penalty for failure to keep records and make reports.
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Warehouse Storage Loans

1446.95 Commingling of quota and additional peanuts.
1446.96 Loans to marketing associations.
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1446.98 Delivery for price support advances.
1446.99 Eligible peanuts.
1446.100 Eligible producer.
1446.101 Peanuts ineligible for loan programs.
1446.102 Pooling and distribution of nut gains.
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Contract Additional Peanuts

1446.106 Approval as handler of contract additional peanuts.
1446.107 Contracts for additional peanuts for crushing or export.
1446.108 Final contract price.
1446.109 Letter of credit.
1446.110 Transfer of contracts prior to delivery.
1446.111 Inspection of contract additional peanuts.
1446.112 Contracts between handlers.
1446.113 Purchase of additional peanuts for domestic edible use.
1446.114 Recordkeeping requirements for contract additional peanuts.
1446.115 Excess marketing of quota peanuts.
1446.116 Processing additional peanuts into products.
1446.117 Marketing peanut products made from contract additional peanuts.
1446.118 Storage requirements of contract additional peanuts prior to processing.
1446.119 Disposition of contract additional peanuts.
1446.120 Disposition date.
1446.121 Physical supervision of contract additional peanuts.
1446.122 Domestic sale or transfer of contract additional peanuts.
1446.123 Export provisions.
1446.124 Evidence of export.
1446.125 Prohibition on importation or reentry of contract additional peanuts.

Nonphysical Supervision

1446.129 Selecting nonphysical supervision.
1446.130 Export requirements under nonphysical supervision.
1446.131 Disposition credits under nonphysical supervision.
1446.132 Amending the letter of credit under nonphysical supervision.
1446.133 Loss of peanuts under nonphysical supervision.

Penalties

1446.138 Assessment of penalties against handlers.
1446.139 Appeals and requests for reduction.
1446.140 Liens against peanuts on which a penalty is due.
1446.141 Schemes and devices.

Pool Transfers

1446.142 Producer transfer of additional loan peanuts to quota loans.

Paperwork Reduction

1446.143 Paperwork Reduction Act assigned numbers.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); Secs. 101, 108A, 401 *et seq.*, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1421 *et seq.*); Sec 359, 375, 52 Stat. 31, 64 as amended (7 U.S.C. 1359, 1375), unless otherwise noted.

Subpart—Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops

General

§ 1446.70 General statement.

(a) *Scope.* This subpart sets forth the terms and conditions under which producers and handlers may trade in the 1986 through 1990 crops of peanuts and the terms and conditions under which eligible producers acting collectively through specified marketing associations (referred to severally in this subpart as "the association") may obtain price support on their 1986 through 1990 crops of farmers stock peanuts. Eligible farmers stock peanuts produced by eligible producers which are quota peanuts shall be eligible for price support at the quota support rate. Farmers stock peanuts which are not quota peanuts are considered additional peanuts and shall be eligible for price support at the additional support rate Additional peanuts may only be marketed through contracts with handlers or by being pledged as collateral for price support loans under the terms of this subpart. Annual notice of determinations will specify other terms and conditions not contained in this subpart. Specific terms and conditions relating to contracts for sales of peanuts under loan will be set out in announcements issued by the Commodity Credit Corporation (CCC).

(b) *Price support advances.* Producers may obtain price support at the rates specified in the applicable annual Notice of Determination through the applicable association. Each association will make appropriate price support loan advances on peanuts delivered to it by producers at warehouses operating under peanut receiving and warehouse contracts with the association. CCC will make a loan (referred to in this subpart as a "warehouse storage loan") to the association. Such loans will be secured by the peanuts received by or on behalf of the association.

(c) *Farm storage loans and purchases from producers.* Regulations setting forth the terms and conditions under which CCC will make farm storage loans directly to producers and purchase peanuts directly from producers for any crop of farmers stock peanuts will be published separately in the **Federal Register** and codified at 7 CFR Part 1421.

§ 1446.71 Administration.

(a) *Responsibility.* The Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), will administer this subpart under the general direction and supervision of the Executive Vice President of CCC.

(b) *Limitation of authority.* No State and county committee or its employees or representatives, or any association or its employees or representatives have the authority to modify or waive any of the provisions of this subpart or any amendment or supplement thereto.

(c) *Supervisory authority.* No delegation of authority contained in this subpart shall preclude the Executive Vice President of CCC, or the Executive Vice President's designee, from determining any questions arising under the regulations or form reversing or modifying any determinations made pursuant to such delegation.

§ 1446.72 Definitions.

The regulations of this subpart incorporate the definition and provisions of Parts 718, 719, 729, 780, 1402, 1403, 1408, and 1422 of this chapter

except where the context or subject matter or provisions of the regulations in this subpart otherwise requires. References contained in this subpart to other parts of this chapter or title include any later amendments to those referenced parts. Any reference to the Executive Vice President of CCC shall also apply to any persons designated by the Executive Vice President. Unless the context or subject matter otherwise requires, the following words and phrases as used in this subpart and in all related instructions and documents shall have the following meanings:

(a) *Additional peanuts.* Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

(b) *Additional support rate.* The price support rate applicable to additional peanuts.

(c) *Adequate assets.* Assets less liabilities determined by the area association in accordance with instructions issued by the Executive Vice President of CCC, or his designee to be sufficient to assure export of additional peanuts in compliance with the provisions of this subpart. Assets may include, but are not limited to accounts receivable, value of inventory, equipment, plant, property, and investments. Liabilities may include accounts payable, mortgages, loans, letters of credit and other obligations.

(d) *Adequate facilities.* Weighing, grading, storage, shelling and/or milling equipment and other physical plant and equipment owned, leased or otherwise controlled by a handler as determined by the area association in accordance with instructions issued by the Executive Vice President of CCC, or his designee to be sufficient to receive, store, process and ship all the peanuts to be handled in, by, or through such facilities into the export or domestic market.

(e) *ASCS.* The Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

(f) *Association.* An area marketing association selected and approved by the Secretary which is operated primarily for the purpose of conducting loan activities.

(g) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture.

(h) *Commercial quantities.* Any quantity of peanuts in excess of 110 pounds imported by any person during any marketing year.

(i) *Contract additional peanuts.* Additional peanuts for crushing or exportation, or both, for which a contract has been entered into between a handler and producer in accordance with provisions of this subpart.

(j) *Crushing.* The processing of peanuts to extract oil for food uses and meal for feed uses.

(k) *Domestic edible use.* Domestic edible use means, for the purpose of regulations found in this subpart:

(1) Use of peanuts for milling to produce domestic food peanuts (including the processing of peanuts into flakes);

(2) Use of peanuts for seed, excluding unique strains which are not commercially available and which are used for the production of green peanuts; and

(3) Use of peanuts on a farm.

(l) *Edible export standard for contract additional peanuts.* The standard for raw shelled or inshell peanuts of any crop exported for human consumption constituting U.S. Standards grade requirements, or modifications thereof, or requirements as to wholesomeness, as are specified in the outgoing quality regulations for such crop set forth in the Marketing Agreement for Peanuts No. 146, except that peanuts shown by the applicable Federal-State Inspection Certificate to deviate from these requirements shall be considered as meeting such requirements if the handler certifies to the association that such deviations are:

(1) Acceptable to the export buyer, and

(2) Fall within the range of deviations allowable under the Marketing Agreement.

(m) *Eligible country.* Any destination outside the United States, except that, neither Canada nor Mexico shall be considered an eligible country for the purpose of exporting peanut products other than treated seed peanuts.

(n) *Export and exportation.* A shipment of peanuts or peanut products from the United States directed to a county outside the United States and for which a statement, which is signed by the handler and specifies the name and address of the consignee, is made available to the association or CCC, or, upon request by the association or CCC, for which a consignee receipt is made available to the association or CCC.

(o) *Farmers stock peanuts.* Picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels removed by producers from farmers stock peanuts.

(p) *Forms—(1) Form ASCS–1007.* The Inspection Certificate and Sales Memorandum for farmers stock peanuts.

(2) *Form FV–95.* The Federal-State Inspection Service Peanut Inspection Note sheet.

(3) *Form FV–184* The Federal-State Inspection Service Inspection certificate for milled peanuts.

(q) *Fragmented peanuts.* Peanuts meeting the qualifications for fragmented peanuts as defined in the outgoing quality regulations of the Peanut Marketing Agreement (No. 146) applicable to the crop year in which the peanuts were produced.

(r) *Handler.* Any person or firm, or subdivision thereof, registered with ASCS for the purpose of acquiring peanuts for resale, domestic consumption, processing, exportation, or crushing, through a business of buying and selling peanuts or peanut products.

(s) *Inspector.* A Federal or Federal-State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture to grade peanuts.

(t) *Loan rate.* The national average support rate for quota or additional peanuts adjusted for differences in grade, type, quality, location and other factors and determined by the Secretary to be applicable to such peanuts.

(u) *Loan value.* The amount of price support loan eligibility with respect to a lot of eligible farmers stock peanuts computed for quota or additional peanuts on the basis of weight and the loan rate announced for peanuts of the same type, grade, quality and location as those in such lot.

(v) *Liquidated damages.* An amount due, not as a penalty but as an amount estimated to be the probable damage to the peanut price support program due to an action taken by a producer or handler which is not otherwise subject to a penalty.

(w) *Lot*—(1) *Farmers stock peanuts.* That quantity of farmers stock peanuts for which one ASCS–1007 or other inspection certificate is issued. For farmers stock peanuts delivered to the association for a price support loan advance, a lot shall consist of not more than the contents of one vehicle, or two or more vehicles containing a total of approximately 24,000 pounds.

(2) *Milled peanuts.* That quantity of milled or shelled peanuts for which one FV–184/Peanuts, Inspection Certificate (Peanuts), is issued. The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds.

(x) *Marketing card.* Form ASCS–1002 issued each year in accordance with Part 729 of this title by ASCS county offices to producers for use in marketing

farmers stock peanuts of the applicable crop. Each Form ASCS–1002 shall indicate:

(1) The farm operator's eligibility for quota price support;

(2) The pounds that may be marketed as quota peanuts:

(3) The pounds that may be marketed as contract additional peanuts along with the handler number of the contracting handler; and

(4) The eligibility of additional peanuts for immediate buyback.

(y) *Marketing penalties*—(1) *Producer.* For producers, the penalties prescribed in the poundage quota and marketing regulations, Part 729 of this title, which shall be computed and collected in accordance with those regulations and are effective for the applicable crop.

(2) *Handler.* For handlers, the penalties which are prescribed, computed, assessed and collected in accordance with the regulations of this subpart and are effective for the applicable crop.

(z) *Marketing year.* The period beginning on August 1 of the year in which the peanuts of the applicable crop are planted and ending on July 31 of the following year.

(aa) *New weight.* That weight of farmers stock peanuts obtained by deducting from the gross scale weight of the peanuts:

(1) Foreign material; and

(2) Moisture in excess of 7 percent.

(bb) *Peanut meal.* Any meal, cake pellets, or other forms of residue remaining after extraction or expulsion of oil from peanut kernels, but not including pressed peanuts.

(cc) *Peanut products.* Any products, other than peanut oil or meal, which is manufactured or derived from peanuts including, but not limited to, peanut candy, peanut butter, treated seed peanuts, roasted shelled or inshell peanuts, pressed peanuts, and peanut granules.

(dd) *Peanut receiving and warehouse contract.* Form CCC–1028 (Identity Preserved), Form CCC–1028–A (Commingled Storage), or any other form approved by CCC for the purpose of receiving and warehousing loan collateral peanuts.

(ee) *Peanut Segregation.* Peanuts identified and determined by the Federal-State Inspection Service as:

(1) *Segregation 1.* Farmers stock peanuts which:

(i) Have at least 99 percent peanuts of one type:

(ii) Have not more than two percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay, nor more than 0.5 percent freeze damage;

(iii) Are free from any offensive odor; and

(iv) Are free from visible Aspergillus flavus mold.

(2) *Segregation 2.* Farmers stock peanuts which are free from visible Aspergillus flavus mold and which either:

(i) Have less than 99 percent peanuts of one type; or

(ii) Have more than two percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay, or more than 0.5 percent freeze damage; or

(iii) Have an offensive odor. However, if such peanuts are placed under additional loan and purchased under the immediate buyback procedure, as provided in § 1446.113(a) of these regulations, such peanuts shall be considered Segregation 1 additional peanuts for loan pool accounting purposes.

(3) *Segregation 3.* Farmers stock peanuts which have visible Aspergillus flavus mold. However, if such peanuts are placed under additional loan and purchased under the immediate buyback procedure as provided in § 1446.113(a), such peanuts shall be considered Segregation 1 additional peanuts for loan pool accounting purposes.

(ff) *Pools.* Accounting pools established by the association for quota peanuts and additional peanuts not under contract for which records are maintained by area and by segregation.

(gg) *Quota peanuts.* Peanuts which are; (1) Eligible for domestic edible uses and (2) marketed or considered marketed from a farm as quota peanuts, but not in excess of the effective farm poundage quota.

(hh) *Quota support rate.* The price support rate applicable to quota peanuts.

(ii) *Raw peanuts.* In shell peanuts, blanched peanuts or any other classification of peanuts as designated by CCC which have not passed through any other processing operations.

(jj) *Sound mature kernel peanuts.* Peanut kernels as identified and determined by the Federal-State Inspection Service as sound mature kernels.

(kk) *Sound split kernel peanuts.* Peanut kernels as identified and determined by the Federal-State Inspection Service as sound split kernels.

(11) *Total kernel content.* The total content (TKC) of a lot of peanuts consisting of the total of sound mature kernels (SMK), sound splits (SS), and other kernels (OK) consisting of damaged kernels (DK), and loose shelled kernels (LSK), as identified and determined by the Federal-State Inspection Service.

(mm) *Type.* The generally known types of peanuts (i.e., Runner, Spanish, Valencia, and Virginia), as identified and determined by the Federal-State Inspection Service.

(nn) *United States.* The 50 States of the United States, Puerto Rico, the territories and possessions of the United States, and the District of Columbia.

(oo) *United States government agency.* Any Department, bureau, administration, or other agency of the Federal Government or corporation wholly owned by the Federal Government.

(pp) *Valencia type peanuts produced in the Southwest suitable for cleaning and roasting.* Peanuts produced in the Southwest which are identified, determined and classified by the Federal-State Inspection Service as:

(1) *Bright hull—suitable for cleaning and roasting.* Valencia type peanuts produced in the Southwest containing not more than 25 percent shells damaged by:

(i) Dislocation;

(ii) Cracks or broken ends; or

(iii) both discoloration, and cracks or broken ends.

(2) *Dark hull.* Valencia type peanuts which do not meet the requirements of bright hull Valencia type peanuts as defined in paragraph (pp) (1) of this section.

Basic Handler Operations

§ 1446.76 Handler registration.

(a) *Registration requirement.* Each person who plans to acquire peanuts for processing or resale must first be approved by CCC as a handler. However, any person acting in the capacity as a handler shall be subject to all penalties that may apply to handlers under this subpart, irrespective of whether such person is registered under this subpart. Further, such persons will be subject to such penalties for non-registration as may apply. Such approval shall be evidenced by a handler number issued in accordance with this subpart. To receive a handler number, a person must complete and submit an application in accordance with paragraphs (b) and (c) of this section. The application shall include a form approved by CCC and evidence of the guarantee of performance which is required by § 1446.106 of this subpart.

(b) *Persons acquiring inspected peanuts.* A person who plans to acquire peanuts that have been inspected by a duly authorized inspector of the Federal-State Inspection Service must register as

a handler with the area marketing association for each area in which peanuts will be acquired.

(c) *Persons acquiring noninspected peanuts.* A person who plans to buy or otherwise acquire peanuts for processing or resale before the peanuts have been inspected by the Federal-State Inspection Service must register with the State ASCS office of the State in which the person will operate as a handler, or if operating in more than one State, the handler must register in either the State of residence or principal business location.

§ 1446.77 Handler approval.

(a) *Approval requirements.* (1) To be approved as a handler, a person must prove to the satisfaction of the association that he owns, leases or otherwise has access to adequate storage facilities and adequate handling facilities to receive, weigh and grade peanuts in commercial quantities. Consideration for approval will be made annually. Representatives of the association may inspect or otherwise verify that the facilities are adequate to receive and handle peanuts.

(2) To handle quota or additional loan peanuts, a person must enter into a warehousing contract, form 1028 or 1028–A, and meet all requirements of the contract with respect to receiving handling and storage requirements.

(3) To handle contract additional peanuts, a person must meet the requirements of § 1446.106 of this subpart.

§ 1446.78 Peanut buyer card and buying point card.

The association which registers a handler will issue an embossed peanut buyer card which will show the handler's registration number, name and address. The handler will use the card for identification when buying or selling peanuts. ASCS will issue a buying point identification card to the Federal-State Inspection Service for delivery to each handler who operates a buying point at which peanuts are inspected. The buying point card will be embossed with a number used to identify the physical location of the buying point where the peanuts are inspected.

§ 1446.79 Examination of producers' marketing cards.

All handlers shall examine the producers' marketing cards and record each purchase or delivery of peanuts as required in § 1446.80 in accordance with procedures established by ASCS. Any peanuts delivered by producers under an additional peanut contract in excess of the provisions of such contract shall be considered as having been marketed as quota peanuts. The handler shall not accept peanuts from any producer who does not present a marketing card and farm identification card at the time of delivery.

§ 1446.80 Marketing card entries.

Immediately after each lot of peanuts is marketed, the handler shall make the following entries on the marketing card from the ASCS–1007 or ASCS–1030:

(a) The ASCS–1007 serial number which identifies the lot of peanuts, or the date of marketing if the peanuts were not inspected;

(b) The net pounds marketed;

(c) The unused poundage quota balance remaining after the marketing;

(d) The unused contract additional poundage balance remaining after the marketing;

(e) The handler's number or, for loan peanuts, the association number;

(f) For inspected peanuts, the buying point number;

(g) Type of peanuts marketed; and

(h) Any penalties or claims collected.

§ 1446.81 Producer indebtedness.

(a) *Prior liens.* The handler shall inquire of all producers from which the handler buys or otherwise acquires peanuts as to whether any liens exist on peanuts offered for loan and shall note the response on the Warehouse Receipt and Draft form. Any payments made on such peanuts shall be made jointly payable to the producer and any and all lienholders known to the handler.

(b) *Indebtedness to the United States.* The handler shall be deemed to have notice at the time of delivery of any and all liens or indebtedness of the producer to any agency or instrumentality of the United States if notice appears on the marketing card. Such liens and indebtedness include, but are not limited to, liens for any poundage quota penalty due on prior crops, FmHA liens, farm storage facility and dryer loan payments due CCC, and indebtedness to any other agency of the United States. The handler shall collect such indebtedness from each producer, to the extent of the amount due such producer for loan collateral peanuts. Collection shall be made and remitted in accordance with instructions issued by the association.

§ 1446.82 Collection of marketing penalties owed by a producer.

(a) *Marketing penalties.* The handler shall be liable to CCC for any penalty due on peanuts at the time the handler buys or otherwise acquires those peanuts from a producer. The handler may deduct the penalty from the price paid to the producer. If a handler fails to collect the penalty due on any marketing of peanuts from a farm and to forward such penalty to CCC, the handler and each of the producers on the farm shall be held jointly and severally liable to CCC for the amount of the penalty.

(b) *Penalty for errors on marketing card.* The producer and the handler are jointly and severally liable for any penalties which may be due if the handler made an error or failed to properly record the pounds of peanuts marketed on the producer's marketing card and such error caused an excess marketing of the producer's effective poundage quota, as defined in Part 729 of this title, or in the pounds of additional peanuts contracted in accordance with this subpart.

§ 1446.83 Transmittal of penalties.

Form ASCS–1012 Peanuts, "Buyer's Transmittal of Claims and/or Marketing Penalty," shall be used by a handler to transmit to CCC any penalty or a claim collected directly or indirectly from a producer. Each collection shall be sent to the county ASCS office which issued the marketing card. The transmittal shall be made within two weeks after the end of the week in which the collection is made. A collection is deemed to have been made when payment is made to the producer.

§ 1446.84 Recordkeeping requirements.

(a) *Persons required to keep records.* Any person who is required under this subpart to keep any record or make any report whether as a person who dries farmers stock peanuts by artificial means for a producer, a buyer, warehouseman, processor, or common carrier of peanuts, a broker or dealer in peanuts, any farmer engaged in the production of peanuts, an agent marketing peanuts for a producer or acquiring peanuts for a buyer or association, a person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or a person owning or operating a peanut-picking or peanut-threshing machine, shall keep such records for each such business.

(b) *Marketing records.* Each handler shall keep records and make reports as required by § 1446.85. The handler shall maintain the records with respect to each lot of farmer's stock peanuts which the handler acquires for his own account.

(c) *Sales and disposal records.* Each handler shall maintain records of all sales or other disposals of peanuts. Such records shall show the date of sale or disposal, quantity, type, purchaser, whether sold as farmers stock peanuts,

milled, edible peanuts or peanuts for crushing, and any other information which may be required by this subpart.

(d) *Method of keeping records.* Each handler shall maintain the records required by this subpart in a manner that enables the association, CCC, ASCS, or any other representative of the Secretary to readily reconcile the quantities, grades, and qualities of all peanuts acquired and disposed of by such a handler. Records concerning the acquisition and disposal of contract additional peanuts must also be kept in a manner that allows the association, CCC, ASCS, or any other representative of the Secretary to readily determine whether there has been compliance with the provisions of this subpart.

§ 1446.85 Records and reports required of handlers.

As required by this section and in accordance with instructions issued by the Executive Vice President of CCC, or his designee, each handler shall keep records and make reports as follows:

(a) *Inspected peanuts.* If the Federal-State Inspection Service inspects a lot of peanuts, the handler shall complete ASCS–1007, Inspection Certificate and Sales Memorandum, or such other form approved by CCC or ASCS and on which the following information must be entered:

(1) The name and address of the farm operator, the State and county codes for the farm and either—

(i) The farm number of the farm on which the peanuts were produced if the peanuts are marketed by the producer, or

(ii) The handler number if the peanuts are marketed by a handler;

(2) The buying point number assigned to identify the physical location of the buying point where the peanuts were marketed;

(3) Either the name, address, and handler number of the handler, or if the peanuts are accepted for loan through the association, the association, name, number, and address;

(4) The net weight of the peanuts;

(5) The quantity of peanuts marketed as either loan quota, loan additional, commercial quota or contract additional;

(6) The date of purchase; and

(7) The amount of penalty collected.

(b) *Noninspected peanuts.* A handler who purchases farmers stock peanuts which have not been inspected by the Federal-State Inspection Service shall complete an ASCS–1030, Report of Purchase of Noninspected Peanuts, or such other form approved by CCC or ASCS for each lot of farmers stock peanuts purchased. The handler shall use ASCS–1030–P, Handler's Report of Purchases of Noninspected Peanuts or such other form approved by CCC or ASCS, to transmit the ASCS–1030 or other approved form to the State ASC committee in the State in which the handler's business is located or such other location or entity approved by CCC or ASCS. The handler shall complete the ASCS–1030 or other approved form to show the following:

(1) The name and address of the seller:

(2) The name and address of the farm operator and the State and county codes and either—

(i) The farm number when the peanuts are purchased from the producer of the peanuts, or

(ii) The handler's name, address, and registration number when the peanuts are purchased from another handler;

(3) Type of peanut purchased;

(4) Date of purchase;

(5) Quantity purchased;

(6) Method of determining the weight; and

(7) The signature of the seller and the date the seller signed the ASCS–1030 or other approved form.

(c) *Resales.* Each handler who resells farmers stock peanuts shall keep records of:

(1) The name and address of the buyer, and if the peanuts are sold to a handler, the buyer's handler number;

(2) The date of the sale;

(3) The type of peanuts sold; and

(4) The pounds (net weight) of peanuts sold.

(d) *Peanuts shelled or milled for a producer.* The handler shall maintain records of peanuts shelled for a producer including the following information:

(1) Date of shelling or milling;

(2) Name and address of the producer;

(3) State and county codes and the farm number of the farm where the peanuts were produced;

(4) Quantity of peanuts (farmers stock basis) shelled or milled;

(5) Quantity of shelled or milled peanuts retained by the sheller; and

(6) Quantity returned to the producer.

(e) *Peanuts dried for a producer.* The handler shall maintain records of peanuts dried for a producer including the following information:

(1) State and county codes and the farm number of the farm where the peanuts were produced;

(2) Name and address of the producer; and

(3) Quantity dried as determined by the farmers stock basis weight after drying, and the date the drying was completed.

(f) *Peanuts from which foreign material, and LSKs or pods are removed for a producer.* The handler shall maintain records of peanuts from which foreign material and LSKs or pods are removed for a producter including the following information:

(1) Date of removal;

(2) Name and address of the producer;

(3) State and county codes and the farm number of the farm where the peanuts were produced;

(4) Gross weight of:

(i) Peanuts prior to removal,

(ii) Peanuts removed as LSKs,

(iii) Peanuts removed as pods,

(iv) Peanuts remaining after removal of foreign material and LSKs or pods;

(5) Quantity of peanuts retained by the person performing the service in the form of:

(i) Pods; and

(ii) LSKs.

(6) Peanuts returned to the producer as,

(i) Pods;

(ii) LSKs; and

(iii) LSKs and pods.

(g) *Green peanuts purchased from producer.* Each buyer of green peanuts shall report his purchase to ASCS, on Form ASCS–1011 or such other form as CCC or ASCS shall designate, except that small lot purchases not in commercial quantities including, but not limited to, street sales, local market sales, and grocery store sales shall not be subject to this reporting requirement. This report shall subject the buyer to a review of those purchase and sales records as required in this subpart. Any buyer of green peanuts who fails to keep records as required by this section shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $500. Each buyer shall keep records of green peanuts purchased including the following information:

(1) Date of purchase;

(2) Name and address of producer selling green peanuts;

(3) Name and address of farm operator and farm number (including State and county codes) of the farm on which the green peanuts were produced; and

(4) Pounds of green peanuts purchased.

§ 1446.86 Examination of records and reports.

The Executive Vice President of CCC, the Deputy Administrator of ASCS, the Director of the Tobacco and Peanuts Division, or the State Executive Director, and any person authorized by any one of such persons, and any auditor or

agent of the office of Inspector General, is authorized to examine any records that they have reason to believe are relevant to any matter pertinent to the peanut poundage quota program or to this subpart. Upon request, any person required by the provisions of § 1446.84 to keep records shall make available for examination such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as are under this control.

§ 1446.87 Retention of records.

A handler shall maintain all records for a period of three years following the end of the marketing year in which the peanuts were produced. Records relating to contract additional peanuts for which an assessment for penalties or liquidated damages has been assessed, shall be retained for five years following the date the assessment was made or until the conclusion of the assessment action, whichever is later and that records shall be kept for such longer periods of time as may be requested in writing by the Executive Vice President of CCC, or his designee.

§ 1446.88 Information confidential.

All data requested and obtained by the Secretary in accordance with the provisions of this subpart shall be kept confidential by all employees of the U.S. Department of Agriculture and of the marketing association. Such data shall be released only at the discretion of the Executive Vice President of CCC, and then only in a suit or administrative hearing under Title III of the Agricultural Adjustment Act of 1938, as amended.

§ 1446.89 Penalty for failure to keep records and make reports.

Any person, who fails to make any report or keep any record as required under this subpart or who falsifies any information or any such report or record shall be subject to a penalty in accordance with § 1446.138 of this subpart for failure to comply with regulations set forth by the Secretary.

§ 1446.90 Fraud by handler.

Any fraudulent representation made by a handler in the records or reports required by this subpart shall render the handler subject to criminal prosecution and civil fines under applicable Federal fraud statutes. In addition, the handler shall be personally liable to CCC for all costs which CCC incures as a result of the handler's fraudulent representation, together with interest at the per annum rate whch the Treasurer of the United States charged CCC on the date the fraudulent representation was made.

Warehouse Storage Loans

§ 1446.95 Commingling of quota and additional peanuts.

Quota and additional farmers stock peanuts of like type and segregation may be commingled in storage by a handler and exchanged on a dollar value basis to facilitate handling and marketing. Such peanuts must be inspected as farmers stock peanuts and, except for such peanuts purchased from CCC for domestic edible use on an ingrade, in-weight basis, and they shall be accounted for on a dollar value basis less a one time adjustment for shrinkage for each crop. Such adjustment shall be equal to 4.0 percent of the dollar value of the peanuts for Virignia-type peanuts and 3.5 percent for all other types; except that, if such peanuts are graded out and accounted for prior to February 1 of the year following the year in which the peanuts were grown, the adjustment of the dollar value for shrinkage shall be 3.5 percent for Virginia-type and 3.0 percent for all other peanuts. The dollar value basis for all peanuts shall be based on the quota support rate. The handler shall receive, store, and deliver all such peanuts in accordance with good commercial practice and any instructions provided by CCC. For each lot of quota and/or additional peanuts commingled in storage, the records of the handler shall show at all times the date and place received, the name and address of the producer, the type, segregation, pounds, and dollar-value-in. The handler shall keep such other accounts and records and furnish such information and reports relating to the dollar-value-out and disposition of such peanuts as may be prescribed by the association or CCC. The provisions of this section applicable to shrinkage shall not apply for handlers choosing the nonphysical supervision requirements of §§ 1446.129 through 1446.133.

§ 1446.96 Loans to marketing associations.

CCC will make warehouse storage price support loans to those associations specified in § 1446.97 of this subpart that contract with CCC to arrange for the storing and handling of farmers stock peanuts, make price support advances to producers on such peanuts, and use such peanuts as collateral for loans obtained from CCC. Loans on quota peanuts shall be made on the basis of the quota support rate, and loans on additional peanuts shall be made on the basis of the additional support rate. Such loans shall be due on demand.

§ 1446.97 Area marketing associations.

Price support advances will be available through:

(a) *The GFA Peanut Association* of Camilla, Georgia, for peanuts produced in the Southeastern area consisting of Puerto Rico, the U.S. Virgin Islands, and the States of Alabama, Florida, Georgia, Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(b) *The Southwestern Peanut Growers Association* of Gorman, Texas, for peanuts produced in the Southwestern area consisting of all other territories and possessions of the United States not listed in paragraph (a) or (c) of this section, and the States of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming;

(c) *The Peanut Growers Cooperative Marketing Association* of Franklin, Virginia, for peanuts produced in the Virginia-Carolina area consisting of the District of Columbia, and the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virgina, West Virgina, Wisconsin, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

§ 1446.98 Delivery for price support advances.

(a) *Where available.* Unless otherwise approved by the association or by CCC, producers must deliver farmers stock peanuts to warehouses which are located in the same marketing area where the peanuts were produced. Price support advances shall be available to eligible producers from warehousemen who have entered into peanut receiving and warehouse contracts with the association. Such contracts shall require the warehouseman to inform producers that price support advances are available and to make such advances on eligible peanuts tendered for price support as provided in paragraph (e) of this section. The contracts shall also require Warehousemen to:

(1) Examine the producers' marketing cards to determine price support eligibility;

(2) Make entries on the marketing card as required by Part 729 of this title and by § 1446.80 of this subpart; and

(3) Record the quantity of quota and additional peanuts and the date of each delivery.

The balance of the quota or contract additional peanuts must be shown on the marketing card after each delivery. The names and locations of participating warehouses may be obtained from the office of the appropriate association or from State or county ASCS offices.

(b) *Time.* Price support advances to eligible producers on peanuts of any crop will be available from the beginning of harvest through the following January 31 or such later date as may be established by the Executive Vice President of CCC. If the final date falls on a day which is not a normal working day for the association, then the applicable final date shall be the next workday.

(c) *Inspection.* An inspector shall determine the type and quality of each lot of farmers stock peanuts that is delivered to an association for a price support advance when such peanuts are received at a warehouse under contract with an association.

(d) *Producer agreement.* To obtain a price support advance, the producer shall authorize in writing the association's pledge to CCC of the producer's peanuts as collateral for a warehouse storage loan and in so doing, the producer shall relinquish any right to redeem or obtain possession of such peanuts.

(e) *Advance to the producer.* For each lot of peanuts delivered, the association shall advance to the producer the support value of such peanuts in accordance with procedures established by CCC. However, the association shall deduct the marketing penalties and deductions as specified in § 1446.81 from such advances, and further, shall deduct any assessments or excise taxes imposed by State law and transmit such amounts to the proper State authorities. In addition, the Southwestern Peanut Growers Association, upon the prior agreement of the producer, may deduct from such advance an amount approved by CCC to be used in financing its peanut related activities outside the price support program, except in no case may such amount exceed $1 per net weight ton of peanuts.

§ 1446.99 Eligible peanuts.

(a) *Basic eligibility.* Peanuts eligible for support shall be farmers stock peanuts from the applicable crop produced in the United States by an eligible producer. In addition, such peanuts:

(1) Must be free and clear of all liens and encumbrances, including any landlord's liens, unless acceptable waivers are obtained;

(2) Must be produced in the same marketing area in which they were delivered for price support loan, unless otherwise approved by CCC.

(3) Must, if delivered to the association in bags in the Southwestern area, be in new or thoroughly cleaned used bags which:

(i) Are made of material other than mash or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers,

(ii) Are free from holes,

(iii) Are finished at the top with either the selvage edge of the material, a binding, or a hem, and

(iv) Are uniform in size with approximately 2 bushel capacity;

(4) Must not have been produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession; and

(5) Must have been inspected as farmers stock peanuts and have an official grade determined by an inspector.

(b) *Quota support.* In addition to the basic eligibility requirements in paragraph (a) of this section, to be eligible for quota support the peanuts:

(1) Must be Segregation 1 peanuts;

(2) Must contain not more than 10.00 percent moisture and, if mechanically dried, also contain at least 6 percent moisture;

(3) Must contain not more than 10 percent foreign material;

(c) *Additional support.* In addition to the basic eligibility requirements in paragraph (a), peanuts to be eligible for support applicable to additional peanuts:

(1) Must contain not more than 10.00 percent moisture;

(2) Must contain not more than 10 percent foreign material, unless the handler agrees to purchase such peanuts for domestic edible use as provided in § 1446.113;

(d) *Additional support for peanuts with excess moisture.* Peanuts which are graded as Segregation 2 or 3 and which, because they contain more than 10 percent moisture and/or foreign material, would otherwise not be considered acceptable for loans under the provisions of paragraph (b) and (c) of this section shall nonetheless be considered eligible for loans, provided that all other conditions of this section are met, and that:

(1) The level of moisture does not exceed a level determined to be acceptable by the association; and

(2) The local crushing market for peanuts is such that the peanuts can be crushed within a reasonable time, as determined by the association; and

(3) The producer had made a bona fide effort, as determined by the association, to clean and dry such peanuts prior to offering such peanuts for loan.

(e) *Ownership requirement.* Notwithstanding any other requirement of this section, the beneficial interest in all peanuts of all segregations tendered for either quota or additional support must be in the producer who delivers them to the association and must always have been either:

(1) In such producer; or

(2) In the prior producer whom such producer succeeded before the peanuts were harvested. In order to meet this requirement of ownership, the succession of rights, responsibilities, and interests of the former producer with respect to the farm on which the peanuts were produced must have been substantially assumed by the person claiming succession.

§ 1446.100 Eligible producer.

(a) *Requirements.* An eligible producer is an individual, partnership, corporation, estate, trust, a State, a political subdivision of a State, any State agency, or other legal entity that produces peanuts as a landowner, landlord, tenant, or sharecropper on a farm except as set out in this section.

(b) *Program ineligibility.* (1) Any person who produces any agricultural commodity on a field classified by the Soil Conservation Service as highly erodible land or on converted wetland shall be ineligible for price support;

(2) A producer on a farm for which the farm operator fails to file or does not file in a timely manner a report of crop or land use acreage as required by Part 718 of this title shall not be eligible for price support at the quota loan rate *unless* the late-filed report was accepted by the county ASC committee to the extent permitted by Part 718. In addition, no producer shall be eligible for price support if the producer has filed an erroneous report of crop or land use acreage unless:

(i) The determined acreage does not differ from the reported acreage by more than the tolerance established by Part 718 of this title; and

(ii) The county ASC committee determines that the producer acted in good faith in reporting the crop or land use acreage.

(c) *Estates and trusts.* A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or administrator of a deceased person's estate, a guardian of an estate or of a

ward or incompetent person, and trustees of a trust estate shall be considered to represent the insolvent debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the peanut production of the receiver, executor, administrator, guardian, or trustees attributable to the person represented shall be considered to be the production of the person represented. Loan documents executed by any such person shall be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(d) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if such minor meets one of the following requirements:

(1) The right of majority has been conferred on such minor by court proceedings or by statute; or

(2) A guardian has been appointed to manage such minor's property and the applicable price support documents are signed by the guardian; or

(3) A bond is furnished under which a surety guarantees to protect CCC from any loss for which the minor would be liable had such minor been an adult.

§ 1446.101 Peanuts ineligible for loan programs.

Any person who causes peanuts other than those eligible for loan under § 1446.99 to be placed in the loan program shall be deemed to have agreed: CCC may incur serious and substantial damages to its program to support the price of quota peanuts shall pay to CCC, as liquidated damages and not as a penalty, the difference between the average loan rate for that type of peanuts and the market price as determined by CCC for such type for crushing times the amount of peanuts placed under loan. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer. Such person shall pay the damages to CCC promptly upon demand in addition to penalties as may be due or assessed. Liquidated damages under this subsection may be reduced by the Executive Vice President of CCC, or his designee based upon consideration of the following factors:

(a) Whether the person causing ineligible peanuts to be placed in the loan program made a good faith effort to ensure that ineligible peanuts were not pledged as loan collateral;

(b) The degree of damage or potential damage to the price support program caused by the violation;

(c) The nature and circumstances of the violation;

(d) The extent of the violation; and

(e) Any other pertinent information.

§ 1446.102 Pooling and distribution of net gains.

(a) *Pools.* The association shall establish separate pools by area and segregation of peanuts and shall maintain separate, complete and accurate records for quota peanuts under loan and for additional peanuts under loan. Separate pools shall be established for bright hull and dark hull Valencia peanuts produced in New Mexico.

(b) *Pool distribution.* Net gains as determined by the rules set out at § 1446.103, on peanuts in each area pool shall be distributed only to producers placing peanuts in the pool and shall be distributed to each producer in proportion to the value of peanuts placed in the pool by that producer, except that subject to the priorities set forth in paragraph c of this section: (1) Proceeds due any producer from any profit pool shall be reduced to the extent of any loss that is incurred with respect to peanuts such producer has transferred from an additional loan pool to a quota loan pool under the provisions of § 1446.142; (2) proceeds due producers in any additional pool shall be reduced further to the extent of any loss by CCC on any pool for quota peanuts; and (3) proceeds due any producer after reductions made under paragraphs (b) (1) and (2) of this section shall be reduced further to the extent of any losses in any other pool except that:

(i) Losses incurred as a result of transfers from additional loan pools to quota loan pools, shall not be used to offset losses in other marketing areas and

(ii) Gains from pools for Valencia bright hull and Valencia dark hull peanuts produced in New Mexico shall not be used to offset losses in quota pools in other areas.

(c) *Priority of offsets.* (1) Insofar as practicable, offsetting pool losses as set forth in paragraphs (b)(2) and (b)(3) of this section shall be given the following order of priorities, that is, such losses shall be recovered from other pools according to the following schedule:

(i) Segregation 2 and Segregation 3 quota pools (disaster transfer pools), then

(ii) Segregation 2 and Segregation 3 additional pools, then

(iii) Segregation 1 additional pool, then

(iv) Segregation 1 quota pools.

(2) In addition to and following the priorities for offsetting losses as set forth in paragraph (c)(1) this section, the gains in profit pools used to offset pool losses in other marketing areas shall be applied with the following order of priorities:

(i) Sales of additional peanuts for domestic edible uses, then

(ii) Sales of additional peanuts for export, then

(iii) Sales of like peanut types, then

(iv) All other pool profits on a prorated basis.

(d) *Producer indebtedness.* In addition to and following the adjustments in pool proceeds set out in paragraphs (b) and (c) of this section, a producer's share of any pool distributions shall be further reduced (in the following order):

(1) For any installments due on any loan made by CCC for farm storage facilities or for drying equipment, but only when the amount due is recorded on the producers marketing card;

(2) Any indebtedness to CCC, Farmers Home Administration, or to any other agency of the United States, but only when such indebtedness is listed on the county debt record and recorded on the producer's marketing card, or which may be setoff or withheld as provided in 7 CFR Part 13 or any other provision of law.

§ 144.103 Net gains for quota and additional pools.

(a) *Quota pool.* Net gains from peanuts in the quota pool shall consist of:

(1) The net gains which are in excess of the loan indebtedness on quota peanuts and other costs or losses which are incurred on peanuts placed in such pool; plus

(2) An amount from the additional pool to the extent the net gains on additional peanuts sold from the pool for domestic food and related uses equal to any loss incurred by CCC in disposing of all quota peanuts of the same segregation in the same production area.

(b) *Additional pool.* Net gains for peanuts in the additional pool shall consist of:

(1) The net gains which are in excess of the loan indebtedness and other costs or losses which are incurred by CCC on peanuts placed in the pool for additional peanuts, less

(2) Any amount allocated to offset any loss on the pool for quota peanuts as provided in paragraph (a)(2) of this section.

Contract Additional Peanuts

§ 144.106 Approval as handler of contract additional peanuts.

(a) *Requirements of approval.* Any person who plans to acquire peanuts from any source must register and be approved as a handler of additional

peanuts under the requirements of this subpart before entering into contracts with producers for the purchase of additional peanuts for crushing or exportation. Provisions of § 1446.116 shall apply to manufacturers and processors acquiring contract additional peanuts to be exported as peanut products.

(b) *Evidence of adequate facilities.* Any person who plans to buy or otherwise acquire additional peanuts for processing, export or sale must, prior to receiving a handler number, provide written evidence which shows that the person owns or has a lease arrangement which provides for use of adequate facilities and that the person has adequate assets to buy or otherwise acquire or lease such facilities necessary to receive, grade, store and otherwise handle and dispose of additional peanuts in accordance with the provisions of this subpart and in accordance with procedures issued by CCC. Facilities include, but are not limited to, peanut inspection facilities, receiving and storage facilities, loading and unloading facilities, conveyer-type handling equipment, drying equipment, truck scales, and commercial-type shelling equipment excluding hand-held or other type of seed shellers or bar shellers with a shelling capacity of less than 2 tons per day. To verify the condition and adequacy of the facilities, CCC may require a representative of the association or of CCC to inspect such facilities before a handler number is issued.

(c) *Evidence of adequate assets.* Any person who plans to buy or otherwise acquire additional peanuts must submit a financial statement to CCC in accordance with instructions issued by CCC. Such financial statement shall show to the satisfaction of CCC that the person has adequate assets to ensure the person's compliance with the obligation to export additional peanuts in accordance with the provisions of this subpart.

(d) *Financial guarantee (Letter of credit).* Unless the Executive Vice President shall otherwise agree in writing:

(1) For each marketing area in which a handler plans to buy or to otherwise acquire contract additional peanuts, the handler must present an irrevocable letter of credit to the marketing association which shall be used by CCC to make price support advances in that marketing area. Such letter of credit must accompany the application for approval as a handler, and shall be equal to the amount determined by multiplying: (i) The difference between the national average basic quota support rate and the national average basic additional support rate for all peanuts types, times (ii) an amount not less than 10 percent of the total estimated quantity of additional peanuts the handler expects to contract for delivery in that marketing area. A separate letter of credit is required for each marketing area and must represent the amount estimated to be contracted from within each area. Such letter of credit shall be issued in a form and by a bank which is acceptable to CCC.

(2) Each handler contracting for additional peanuts for crushing or export will be required to increase each letter of credit in accordance with the provisions of § 1446.109 of this subpart as needed.

(3) The amount of the letter of credit may be increased as determined necessary by CCC for handlers found in violation of this subpart.

§ 1446.107 Contracts for additional peanuts for crushing or export.

Handlers who have a U.S. address and who are approved to handle contract additional peanuts and who have submitted a letter of credit in accordance with § 1446.109 of this section may contract with producers to buy additional peanuts from producers for crushing or exportation, or both. However, producers approved as producer-handlers under Part 1421 of this title may not contract with themselves for the purpose of immediate buyback of their additional peanuts. All contracts for sales of additional peanuts shall be completed and submitted to the county office of the county in which the farm is administratively located for approval on or before July 31 of the year in which the crop is produced; except that, should July 31 fall on a Saturday or Sunday, the contract must be submitted for approval no later than the Friday immediately preceding the final contracting date. Such contracts cannot be sold, traded or assigned, except under the terms and conditions specified in § 1446.110 of this subpart. In order to be approved by the county committee, the following information must appear on the contract:

(a) The name and address of the operator;

(b) The name and address of the producer;

(c) The State and County code of the State and County in which the additional peanuts are to be produced;

(d) The farm serial number of the farm on which the peanuts are produced;

(e) The name, address, and registration number of the handler;

(f) The amount of Segregation 1, Segregation 2, or Segregation 3 peanuts stated in pounds;

(g) The final contract price to be paid by the handler shown as a set percentage of the quota peanut support rate and defined in accordance with § 1446.108 of this subpart;

(h) A disclosure by the producer of any liens or encumbrances on the peanuts;

(i) The signature of the farm operator and of the producer if the producer is not the operator;

(j) The signature of the handler or the authorized agent of the handler;

(k) The following statement:

I agree that I will export, crush, or otherwise dispose of the peanuts delivered under this contract as provided in 7 CFR Part 1446, Subpart—Peanut Warehouse Storage Loans and Handler Operations for the 1986 through 1990 Crops.; and

(l) The following statement:

The parties to this contract agree that additional peanuts may not be purchased for domestic use under the "immediate buyback" provisions of the regulations found under 7 CFR Part 1446 until all of the contract additional peanuts that were contracted from the farm number shown on this contract have been delivered.

§ 1446.108 Final contract price.

In order for a contract to be approved by the county committee, the contract price shall be:

(a) Expressed in such a manner that a third party may determine that the contract establishes a firm final price at the time the contract is submitted for approval,

(b) That the contract contains a prohibition against changing the price, and

(c) That the price is set at a level that is not lower than the additional support rate for the type peanuts contracted.

§ 1446.109 Letter of credit.

(a) *Amending the letter of credit.* (1) By July 31 of the year in which the peanuts are produced, handlers who contract with producers to buy additional peanuts for export or crushing shall, as needed, increase the letter of credit submitted at time of handler registration to an amount calculated by multiplying the rate determined as the difference between the national average basic quota support rate and the national average basic additional support rate for all peanut types, times:

(i) Not less than 10 percent of the total quantity of additional peanuts which the handler electing physical supervision has contracted; or

(ii) Not less than 25 percent of the total quantity of additional peanuts which the handler electing nonphysical supervision has contracted. Also, a handler who wishes to handle peanuts under the nonphysical provision of this subpart must increase the letter of credit in accordance with the schedule in § 1446.132. Before any contracts within an area may be approved by the county ASC committee, the association must verify that the letter of credit submitted to the association has been amended in accordance with the requirements of this section.

(2) The association will notify handlers who have not submitted an adequate letter of credit as required by this section of the amount of shortage and that they will have 15 days from the date of notification to amend the letter of credit. If a handler does not amend the letter of credit within the 15 day period the county ASCS offices will notify producers that all contracts with such handler will not be approved by the county ASC committee and the producers will be given the opportunity to transfer their contracts to another handler in accordance with § 1446.110 of this subpart and instructions issued by ASCS.

(b) *Inadequate letter of credit.* Contracts entered into by handlers who do not increase the letter of credit in accordance with this section and with any instructions issued by the Executive Vice President of CCC shall not be approved by the county ASC committee.

(c) *Reducing the letter of credit.* The handler shall subsequently deliver to the association satisfactory evidence as described in § 1446.124 to verify that contract additional peanuts have been exported or otherwise disposed of in accordance with the provisions of this subpart. Upon receipt of acceptable evidence the association may reduce the letter of credit by the amount that the handler's export obligation as shown on association records has been satisfied and to the extent any potential marketing penalty on the remaining obligation is covered by a letter of credit.

(d) *Drawing against the letter of credit.* Evidence of export and disposition as described in § 1446.124 must be submitted no later than 30 days after the final date for export as established in § 1446.120, or 15 days prior to the expiration of the letter of credit, whichever occurs first. If satisfactory evidence is not presented by such date, CCC may authorize the association to draw against the letter of credit in order to recover the penalty due for failure to properly dispose of contract additional peanuts in accordance with this subpart. However, such action shall not compromise any penalty due CCC if the letter of credit is insufficient to cover the full amount of the penalty.

§ 1446.110 Transfer of contracts prior to delivery.

(a) *Contract transfers and delivery of contracted peanuts to other handlers.* If a handler fails to submit an adequate letter of credit as required by § 1446.109 or if a handler is otherwise unable to perform under any contract with a producer for the purchase of additional peanuts due to conditions beyond the handler's control, the handler and the producer may agree to the delivery of the peanuts to other handlers under the terms of the original contract or under modified terms. Such conditions shall include but are not limited to insolvency, bankruptcy, death, or destruction of warehouse facilities. Before such transfer may be approved, the handler assuming the contract must amend the letter of credit to cover the total amount contracted and intended to be transferred. Such transfers shall not be valid without the prior written approval of the Deputy Administrator, State and County Operations, ASCS. A transfer shall be approved by the Department Administrator only if it is determined by the Deputy Administrator that such transfer will not impair the effective operation of the peanut program.

(b) *Contract transfers and transfer of delivery obligations to other producers.* If a producer is unable to fully perform the terms of a contract with a handler for the purchase of additional peanuts due to conditions beyond the producer's control or other conditions as may be prescribed by CCC, the handler and the producer or his successor-in-interest may agree to a modification of the contract or to the substitution of another producer either under the original terms of the contract or modified terms: Provided however, that where there is a substitution of another producer, the original contract price and quantity may not be changed. Such conditions may include but are not limited to farm reconstitutions (combinations and divisions), insolvency, bankruptcy or death. Such modifications or transfers of contract obligations shall not be valid without the prior written approval of the Deputy Administrator, State and County Operations, ASCS. A transfer shall be approved by the Deputy Administrator only if it is determined by the Deputy Administrator that such modifications or transfers will not impair the effective operation of the peanut program except that a transfer shall not be approved if the producer assuming the contract has marketed additional peanuts under the "immediate buyback" provision during the applicable marketing year prior to the transfer. Contract modifications other than changes in producer, owner, or operator, may be approved by the county ASCS office in accordance with instructions issued by ASCS.

§ 1446.111 Inspection of contract additional peanuts.

The type and quality of each lot of contract additional peanuts delivered under contract shall be determined by the Federal-State Inspection Service when such peanuts are delivered by a producer. The inspection shall include determinations of the total kernel content export obligation as well as the amount of sound mature kernels and sound split kernels in each lot in accordance with instructions issued by CCC.

§ 1446.112 Contracts between handlers.

(a) *Peanuts for export or crushing.* Handlers who elect to shell or mill contract additional peanuts under the physical supervision option may not sell, assign, or otherwise transfer liability or credits for exporting or crushing contract additional peanuts to other handlers, except during the period from September through November of the year following the year in which such peanuts were produced. Handlers may apply for approval of transfer of such liability or credits on the ASCS–1006 or any other form approved by CCC.

(b) *Peanuts for processing into products.* Handlers may transfer liability for the export of contract additional peanuts to a processor of peanut products in accordance with the provisions of § 1446.116.

§ 1446.113 Purchase of additional peanuts for domestic edible use.

(a) *"Immediate buyback" purchase.* (1) Except as provided in paragraph (b) of this section or as the Executive Vice President shall direct, a handler shall have the right to purchase additional peanuts during harvest season from the association for domestic edible use at buying points owned or controlled by such handler at prices equal to 100 percent of the quota loan value of such peanuts plus a charge to cover all costs incurred with respect to such peanuts for inspection, warehousing, shrinkage, and other expenses. The "immediate buyback" purchase may be made only from the association and only on the date that such peanuts were delivered by the producer as collateral for a price support loan. The "immediate buyback" purchase shall be valid and accepted by

the association only if the marketing card (ASCS–1002) is stamped "eligible for buyback". The handler shall:

(i) Act as an agent for the association by advancing to the producer price support from CCC funds for the peanuts at the additional loan rate;

(ii) Pay his own funds to the producer for any agreed premiums for the delivery of such peanuts by the producer to the handler; and

(iii) Forward to the association a check payable to CCC from his own funds for the peanuts in an amount equal to the quota loan value of the peanuts, as well as any handling charges.

The check and applicable ASCS–1007 will identify the peanuts as additional peanuts that may be used for domestic edible use and those documents must be transmitted to the association (as evidenced by a postmark) not later than the third workday (excluding Saturdays, Sundays, and Federal holidays) following the day the peanuts were inspected. Such receipts will be credited to the additional loan pool for such peanuts.

(b) *Restrictions on "immediate buyback" sales.* (1) Notwithstanding the provisions of paragraph (a) of this section, additional peanuts may not be purchased under the "immediate buyback" provision until all of the peanuts contracted for export or crushing on a farm have been delivered by any and all producers who have contracted additional peanuts produced on that farm. A producer's marketing card will not be stamped eligible for immediate buyback until the producer or producers for the farm number as shown on the contract have delivered the total amount contracted on such farm and each producer's marketing card shows a zero balance for contract additional peanuts. If additional peanuts are purchased under the buyback provision before the marketing card is stamped eligible for immediate buyback the producer and handler shall be jointly and severally liable for the penalty for using additional peanuts in the domestic market assessed in accordance with § 1446.138.

(2) The balance shown on the marketing card for contract additional peanuts shall determine the eligibility for immediate buyback. Agreements between handlers and producers to void the contract shall not reduce the balance shown on the producer's marketing card for contract additional peanuts.

(c) *Purchase of quota and additional peanuts subsequent to delivery.* Handlers may also purchase quota or additional peanuts from the loan pool for domestic edible use after delivery by producers to the association, under terms and conditions established by the association and CCC. The minimum price for such purchases shall be the applicable carrying charges plus: (1) Not less than 105 percent of the quota loan rate adjusted for quality of the peanuts if paid for not later than December 31 of the marketing year; or (2) not less than 107 percent of the quota rate adjusted for quality value if paid for after December 31 of the marketing year.

§ 1446.114 Recordkeeping requirements for contract additional peanuts.

All contract additional peanuts acquired by a handler shall be disposed of by domestic crushing or exportation to an eligible country in accordance with the conditions set forth in this subpart. Handlers shall ensure that any additional peanuts exported are evidenced by appropriate documentation as required by § 1446.124. All handler's records shall be subject to a review by the association, CCC, ASCS, or other representatives of the Secretary of Agriculture to determine compliance with the provisions of this subpart. Refusal to make such handler's records available to the association, CCC, ASCS, or other representative of the Secretary or the failure of such records to establish such disposition by the handler shall constitute prima facie evidence of noncompliance with this subpart for which a penalty may be assessed against the handler in accordance with § 1446.138. Reviews of handler records shall be made by the association in accordance with guidelines established by CCC.

§ 1446.115 Excess marketing of quota peanuts.

A handler will be subject to a penalty for noncompliance if it is determined by CCC that he marketed from any crop, for domestic edible use, a larger quantity, or higher grades or quality of peanuts, than could reasonably be produced from the quantity of peanuts having the grade, kernel content, and quality of quota farmers stock peanuts purchased by the handler during the applicable marketing year and those purchased in accordance with the provisions of § 1446.113, regardless of whether additional peanuts were acquired by the handler. In such case, the handler will be obligated to pay a penalty equal to 140 percent of the basic quota support rate with respect to that quantity of farmers stock peanuts which are determined by CCC to be necessary to produce the excess quantity or grade or quality of peanuts sold, except that such penalty may be reduced in appropriate circumstances under the terms set forth in § 1446.139, which also prescribes the manner in which the penalties will be assessed.

§ 1446.116 Processing additional peanuts into products.

(a) *Application for purchase of additional peanuts.* Processors of peanut products may apply to handle additional peanuts without supervision under the provisions of this subpart provided the processor:

(1) Agrees in writing to export the additional peanuts as required by this subpart,

(2) Provides the association with a letter of credit, in accordance with instructions issued by the Executive Vice President of CCC, or his designee, in an amount equal to 140 percent of the national average quota support rate announced by the Secretary, times the quantity of peanuts shown on the applicable ACS–1006's; and

(3) Provides the association a description of the type of product that will be processed, the type of containers, size of containers, and the standard peanut processing yield for the product. Such application shall be made to the area marketing association. Upon verification of product yield by the association, approval of the transfer and approval of the letter of credit, a product export obligation will be established on association workbooks and the processor notified of the quantity of product export obligation.

(b) *Proof of export.* The processor shall submit to the association proof of export as required by this subpart. Upon receipt of acceptance documentation the association may reduce the letter of credit in accordance with instructions issued by ASCS.

(c) *Applicability of regulations.* By agreeing to the provisions of this section, a processor is deemed to have agreed that the provisions of this subpart such as excess to facilities, fraud provision, lien provision and any other provision that apply to a handler of additional peanuts shall apply to the processor and the processor shall be considered a handler for purposes of applying the penalty provisions of this subpart.

§ 1446.117 Marketing peanut products made from contract additional peanuts.

A handler will be subject to a penalty for noncompliance if it is determined by CCC that the handler marketed in the United States, including its territories and possessions and the District of Columbia, any peanut products made from any crop of contract additional

peanuts. In such case, the handler will be obligated to pay a penalty equal to 140 percent of the basic quota support rate with respect to that quantity of farmers stock peanuts which are determined by CCC to be necessary to produce the quantity of peanut products sold, irrespective of whether the products were produced domestically or outside the United States. Such quantity shall be considered as peanuts not exported and subject to penalty. Further, the marketing of any additional peanuts for domestic edible use shall be subject to a penalty at 140 percent of the quota support rate, irrespective of whether the peanuts have been previously exported. Such penalties may be reduced in appropriate circumstances under the terms set forth in § 1446.139, which also prescribes the manner in which penalties will be assessed.

§ 1446.118 Storage requirements for contract additional peanuts prior to processing.

(a) *Commingled storage.* Handlers may commingle quota loan, quota commercial, additional loan, and contract additional peanuts. In such case, quota loan and additional loan peanuts must be inspected as farmers stock peanuts and settled in accordance with the provisions of this section. Except when such peanuts are purchased from the association for domestic edible use on an in-grade, in-weight basis and except for handlers agreeing to the nonsupervision provisions of §§ 1446.129 through 1446.133, contract additional peanuts must be inspected on a farmers stock basis and accounted for on a dollar-value basis less a one time adjustment for shrinkage for each crop equal to 4.0 percent of the dollar value of the peanuts for Virginia-type peanuts and 3.5 percent for all other peanut types. However, if such contract additional peanuts are graded out and accounted for prior to February 1 of the year following the year in which the peanuts were grown, the adjustment of the dollar value for shrinkage shall be 3.5 percent for Virginia-type and 3.0 percent for all other peanuts.

(b) *Identity preserved storage.* Contract additional peanuts stored "identity preserved" shall be inspected as farmers stock peanuts and settled on a dollar value basis. The handler shall receive, store, and otherwise handle such peanuts in accordance with good commercial practices and instructions provided by CCC.

(c) *Penalties.* Failure to store peanuts, account for peanuts or handle peanuts in accordance with the requirements of this section or other requirements of this subpart shall constitute noncompliance with this subpart for which a penalty may be assessed in accordance with § 1446.138; except that handlers failing to grade out of storage the proper value of peanuts shall be subject to penalty for failure to export the quantity of peanuts determined to be necessary to make up any shortage in value of grade out.

§ 1446.119 Disposition of contract additional peanuts.

(a) *Disposition requirements.* Handlers shall dispose of the identical peanuts graded out of commingled storage as contract additional peanuts or contract additional peanuts stored identity preserved, either by export or crushing, in accordance with the requirements and procedures of this subpart; except that, handlers providing an agreement in writing prior to the beginning of processing or loadout to comply with the nonphysical supervision requirements of §§ 1446.129 through 1446.133 may handle and dispose of contract additional peanuts as required by the provisions of those sections.

(b) *Disposal of peanut kernels.* Contract additional peanuts may be disposed of by domestic crushing or by export to an eligible country as follows:

(1) All kernels may be crushed domestically; or

(2) All kernels may be exported for crushing, if fragmented; or

(3) All kernels that meet the edible export standards may be exported and the remaining kernels:

(i) Crushed domestically, or

(ii) Exported for crushing, if fragmented; or

(4) All of the peanuts may be exported as farmers stock peanuts, provided that, if such peanuts are exported for edible use, the peanuts must meet edible export standards, and be positive lot identified; or

(5) The peanuts may be exported to an eligible country as peanut products if such products are produced domestically in accordance with instructions issued by CCC; or

(6) The peanuts may be exported as milled or inshell peanuts if they meet the edible export standards; or

(7) The peanuts may be considered exported or crushed if it is determined by CCC that such peanuts have been destroyed or otherwise made unsuitable for any commercial purpose.

(c) *Disposal of meal contaminated by aflatoxin.* All meal produced from peanuts which are crushed domestically and found to be unsuitable for use as feed because of contamination by aflatoxin shall be disposed of for nonfeed purposes only. If the meal is exported, the export bill of lading shall reflect the analysis of the lot by inclusion and appropriate completion thereon the following statement showing aflatoxin content as parts per billion (PPB):

This shipment consists of lots of meal which contain aflatoxin ranging from — to — PPB and averaging — PPB.

§ 1446.120 Disposition date.

(a) *Final disposition date.* Handlers shall dispose of all contract additional peanuts by August 31 of the year following the calendar year in which the crop was grown.

(b) *Extension of final disposition date.* The final disposition date may be extended by the association to November 30 of the year following the calendar year in which the crop was grown if, by August 31, the handler:

(1) Furnishes information to the association showing that the contract additional peanuts have been milled and positive lot identified;

(2) Furnishes the association with the name and location of the contract additional peanuts; and

(3) Provides a written statement to the association agreeing to pay for any supervision costs which are incurred with respect to contract additional peanuts after August 31.

(c) *Disposition following an extension.* The identical contract additional peanuts with respect to which a request for extension of the final disposition date has been granted by the association or CCC must be disposed of by export or crushing in conformity with the requirements of §§ 1446.120 through 1446.124.

(d) *Penalties.* The failure of a handler to dispose of contract additional peanuts by the final date for disposition in accordance with the requirements of this subpart shall constitute noncompliance with the provisions of this subpart for which a penalty may be assessed against the handler in accordance with the provisions of § 1446.138; except that, if there is a deficiency in the dollar value of peanuts graded out of commingled storage as contract additional peanuts, the handler shall be liable for a penalty in accordance with § 1446.38 for failing to export the amount of contract additional peanuts determined to be necessary to create such a deficiency.

§ 1446.121 Physical supervision of contract additional peanuts.

(a) *Supervision.* (1) Except for handlers agreeing to the nonsupervision provisions of §§ 1446.129 through 1446.133, the handler mus' arrange for

and the association shall conduct onsite supervision of domestic handling of contract additional peanuts including storing, shelling, crushing, cleaning, milling, blanching, weighing, and shipping.

(2) *Final dates for scheduling supervision.* Contract additional farmers stock peanuts shall be scheduled for supervision by the Association during the normal marketing period but not later than July 31 of the calendar year following the calendar year in which the crop was grown, unless prior approval of a later date has been made by the association.

(b) *Access to facilities.* The handler, by entering into contracts to receive contract additional peanuts or any person or firm otherwise receiving contract additional peanuts, shall be deemed to have agreed that authorized representative(s) of CCC and the association:

(1) May enter and remain upon any of the premises of the handler when such peanuts are being received, shelled, cleaned, bagged, sealed, weighed, graded, stored, milled, blanched, crushed, packaged, shipped, sized, processed into flaked peanuts or other products, or otherwise handled;

(2) May inspect such peanuts and the oil, meal, and other products thereof; and

(3) May inspect the premises, facilities, operations, books, and records of the handler to the extent necessary to determine that such peanuts have been handled in accordance with this subpart.

(c) *Notifying the association.* Before moving or processing any contract additional peanuts, the handler or person deemed as an agent of the handler shall notify the association of the time such operation will begin and the approximate period of time required to complete the operation. When a plant is not currently under supervision, the handler shall give at least five working days of advance notice to the association so that supervision can be arranged.

(d) *Processing.* The identical contract additional peanuts shall be shelled or otherwise milled, crushed, or shelled and crushed under supervision as a continuous operation separate from other peanuts. Shelled peanuts shall be identified with positive lot identity tags before being stored and moved from crushing, exportation, processing into peanut flakes, or processing into peanut products to be exported. Except as otherwise authorized by the association, such peanuts will be considered as having been crushed or exported only if positive lot identity has been maintained in the following manner:

(1) *Transportation.* The peanuts shall be transported from the storage location in a covered vehicle such as a truck or railroad car. The vehicle shall be sealed unless the association determines that identity of the peanuts can be maintained without sealing.

(2) *Storage*—(i) *Farmers stock peanuts.* Farmers stock peanuts shall be stored in separate building(s) or bin(s) which can be sealed or which the association otherwise determines will satisfactorily maintain lot identity.

(ii) *Milled peanuts.* Milled peanuts shall be stored in such a manner that the association, under procedures issued by CCC, may make periodic inventory verification of the contract additional lots that are shown on association records as being in the storage facility.

(e) *Expense charged to handlers.* All supervision costs shall be borne by handlers.

§ 1446.122 Domestic sale or transfer of contract additional peanuts.

The exact peanuts shelled as contract additional peanuts and formed into lots under supervision must be exported or disposed of as set forth in this subpart. The domestic sale of contract additional peanuts or the transfer of export obligation is not permitted under the physical supervision requirement of this subpart and the export obligation shall remain with the handler who took delivery of the contract additional peanuts from a producer.

§ 1446.123 Export provisions.

(a) *Export to a U.S. Government agency.* Except for the exportation of raw peanuts to the military exchange services for processing outside the United States, the export of peanuts in any form by or to a United States Government agency shall not be considered as export to an eligible country, but shall instead be considered a domestic edible use of such peanuts. However, sales to a foreign government which are financed with funds made available by a United States agency, such as the Agency for International Development or CCC, will not be considered sales to a United States Government agency if the peanuts are not purchased by the foreign buyer for transfer to a United States agency.

(b) *Export to an eligible country.* All contract additional peanuts which are not crushed domestically (including approved processing into flakes) and which are eligible for export shall be exported in accordance with the provisions of this subpart to an eligible country as peanuts or peanut products.

(c) *Penalty.* Contract additional peanuts or peanut products made from contract additional peanuts diverted or transshipped to any country other than an eligible country shall not be credited against the handler's export obligation. Such handler shall be liable for a penalty as specified in § 1446.138 for failure to export unless the handler provides acceptable proof that additional peanuts or peanut products made from such peanuts have been exported to an eligible country and have not otherwise been transshipped or diverted.

§ 1446.124 Evidence of export.

(a) *Certified statement.* The handler shall provide the following evidence of export: A statement signed by the handler specifying the name and address of the consignee or, upon request by the association or CCC, a copy of the consignee receipt.

(b) *Documentation.* In addition to the statements required in paragraph (a) of this section, and not later than 30 days after the final disposition date provided in § 1446.119, the handler shall furnish the association or CCC with the following documentary evidence of the export of peanuts or peanut products:

(1) *Export by water.* In the case where any of the peanuts are exported by water, a nonnegotiable copy of an onboard ocean bill of lading, signed on behalf of the carrier, showing the date and place of loading onboard vessel, the weight of the peanuts, peanut meal, or products exported, the name of the vessel, the name and address of the exporter, and the country of destination. Peanut meal which is unsuitable for use as feed because of contamination by aflatoxin shall be identifed on the bill of lading in accordance with this section.

(2) *Export by rail or truck.* In the case where any of the peanuts were exported by rail or truck, a copy of the bill of lading showing the weight of the peanuts or peanut meal or products exported, supplemented by a copy of the Shipper's Export Declaration or, in the alternative, other documentation acceptable to the association. Peanut meal which is unsuitable for feed use because of contamination by aflatoxin shall be identified on the bill of lading in accordance with this section.

(3) *Export by air.* In the case where any of the peanuts were exported by air, a copy of the airway bill showing the weight of the peanuts, peanut meal, or peanut products exported, the consignee and shipper and other documentation acceptable to the association. Peanut meal which is unsuitable for feed use because of contamination by aflatoxin

shall be identified on the airway bill in accordance with this section.

(c) *Penalties.* Failure to obtain required supervision from the association, or failure to handle and dispose of contract additional peanuts in accordance with the provisions of this section, shall constitute noncompliance with the provisions of this subpart for which a penalty may be assessed in accordance with § 1446.138

§ 1446.125 Prohibition on importation or reentry of contract additional peanuts.

No exported contract additional peanuts nor peanut products made from additional peanuts shall be reentered in commercial quantities by anyone into the United States in any form. The penalty for a handler or other person who reenters or causes the reentry of such peanuts or peanut products or acquires such peanuts shall be determined in the following manner:

(a) If contract additional peanuts or peanut products made from such peanuts are reentered into the United States, the handler who exported the peanuts or peanut products and the handlers receiving or acquiring such peanuts or peanut products shall be jointly and severally liable for a penalty accessed in accordance with § 1446.138 for failure to export contract additional peanuts except that if the handler who exported the peanuts or peanut products provides documentation such as consignee receipt or other documentation acceptable to the association which verifies that the peanuts reached the export destination in an eligible country, only such persons who imported or acquired such peanuts shall be subject to a penalty in which case such penalty will be assessed in accordance with § 1446.138 for reentering contract additional peanuts.

(b) Liability for liquidated damages arising out of purchases of loan additional peanuts (peanuts purchased from inventories of additional peanuts pledged as price support loan collateral) are governed by the terms of announcements issued by CCC describing the terms and conditions of such sales.

(c) All penalties shall be in addition to such liquidated damages as may be due to CCC.

Nonphysical Supervision

§ 1446.129 Selecting nonphysical supervision.

Except for disposition of contract additional peanuts by crushing or processing into products or as otherwise required by the regulations of this subpart, supervision of the handling of contract additional peanuts shall not be required if a handler, prior to shelling any peanuts, submits to the association a written statement agreeing to comply with the regulations of this subpart applicable to nonphysical supervision.

§ 1446.130 Export requirements under nonphysical supervision.

In agreeing to the provisions of this subpart with respect to nonphysical supervision, a handler agrees to export contract additional peanuts in the following quantities:

(a) Sound split kernel peanuts in an amount equal to twice the poundage of such peanuts purchased by the handler as additional peanuts.

(b) Sound mature kernel peanuts in an amount equal to the poundage of such peanuts purchased by the handler as additional peanuts less the amount of sound split kernel peanuts purchased by the handler as additional peanuts.

(c) The remaining quantity of total kernel content of peanuts purchased by the handler as additional peanuts and not crushed domestically under the provisions of § 1446.131(d).

§ 1446.131 Disposition credits under nonphysical supervision.

(a) *Export credits for sound mature kernel peanuts.* The export obligation for sound mature kernels may be satisfied by exporting peanuts of like type which are graded as U.S. No. 1 or better. Credits for sound mature kernels may be given for whole kernel grades with splits but must exclude the portion attributable to splits.

(b) *Export credits for sound splits.* The export obligation for sound splits may be satisfied by the exportation of peanuts of like type which meet the U.S. splits grade. Export credits for splits may be given only for the portion of splits in whole kernel grades with splits.

(c) *Export credits for other kernels.* The export obligation for other kernels may be satisfied by the export of peanuts which meet the Peanut Administrative Committee (PAC) grade for "other edible quality." Any quantity of sound split or sound mature kernels exported in excess of the amount required to be exported may be credited toward its export requirement for other kernels.

(d) *Other disposition credits.*—(1) *Crushing.* To receive credit for disposing of contract additional peanuts by crushing, the shelled peanuts must be identified with positive lot identity tags before being moved for crushing. The peanuts shall be crushed under supervision of the association representative and shall be crushed in a continuous operation separate from other peanuts. Peanuts crushed for disposition credit must meet U.S. grade standards for edible peanuts.

(2) *Processing into products for export.* To receive disposition credit for contract additional peanuts used in products for export, the shelled peanuts must be identified with positive lot identity tags before being moved for processing. Such peanuts must meet U.S. grade standards for edible peanuts. The peanuts shall be processed under the provision of § 1446.119.

§ 1446.132 Amending the letter of credit under nonphysical supervision.

In agreeing to nonphysical supervision, the handler agrees to periodically increase the letter of credit submitted to the association in accordance with the schedule set out in this section. The schedule requires that no later than the stated dates the handler shall increase the amount of credit available under the letter to cover the amount obtained by the applicable formula, i.e., for each date the letter of credit shall equal an amount not less than the amount determined by multiplying the corresponding percentage times the corresponding base quantity times the corresponding rate.

Date of marketing year	Amount of letter of credit =		
	Percentage ×	Base quantity ×	Rate
Oct. 31	30	Amount of peanuts contracted less export credits.	Difference between quota and additional support rates.
Nov. 30	50	Amount of contracted peanuts delivered to handler less export credits.	Do.
Dec. 31	65	do	Do.
Jan. 31	80	do	Do.
Mar. 31	90	do	Do.
May 31	100	do	Do.
Aug. 31	100	do	140 percent of the quota support rate.

§ 1446.133 Loss of peanuts under nonphysical supervision.

Should a handler who has agreed to the nonphysical supervision provisions of this subpart suffer a loss of peanuts as a result of fire, flood or any other condition beyond the control of the handler, the portion of such loss allocated to contracted additional peanuts shall not be greater than the portion of the handler's total peanut purchases for the year attributable to contract additional peanuts purchased by the handler during such year. The amount purchased shall first be reduced by any amount reported as exported or otherwise properly disposed of as

required under the provision of this subpart.

Penalties

§ 1446.138 Assessment of penalties against handlers.

(a) *Penalty liability.* A handler shall be subject to the penalty for violations of the provisions of this subpart including, but not limited to, any or all of the following violations:

(1) Failure to keep or make available records in accordance with §§ 1446.84, 1446.85, 1446.86, 1446.87, 1446.88, 1446.89, 1446.90, or 1446.114; or

(2) Marketing excess quota peanuts, as set forth in § 1446.115, including any marketing of reentered contract additional peanuts or peanut products made from contract additional peanuts as set forth in § 1446.117 or any marketing of imported peanut products made from additional peanuts purchased from the inventory of CCC loan collateral peanuts; or

(3) Failure to store and account for contract additional peanuts in accordance with the requirements of § 1446.118; or

(4) Failure to export or dispose of contract additional peanuts in accordance with § 1446.119 or failure to export or crush such peanuts by the final disposition date as established in § 1446.120; or

(5) Failure to obtain supervision of or to handle contract additional peanuts as required by this subpart; or

(6) Reentering or importing contract additional peanuts or products made from such peanuts as prohibited by § 1446.124.

(b) *Penalty rate and amount.* The penalty rate shall be equal to 140 percent of the basic quota support rate for the applicable crop year for the type of peanuts involved in the violation times the quantity of peanuts:

(1) For which records have not been properly kept or made available;

(2) Marketed as excess quota peanuts;

(3) Not properly stored;

(4) Not properly disposed of;

(5) Imported as contract additional peanuts; or

(6) Determined by CCC to have been necessary to produce the quantity of peanut products made from contract additional peanuts imported and sold in the United States; or

(7) Not properly supervised or handled in accordance with the regulations of this subpart.

(c) *Notice of assessment.* A handler shall be notified in writing of the assessment of a penalty by a CCC contracting officer. Such notice shall state the basis for the assessment of the penalty, and shall advise the handler of the handler's appeal rights under this subpart.

(d) The provisions of this section are in addition to other remedies provided for by this subpart or other provisions of law.

§ 1446.139 Appeals and requests for reduction.

(a) *Appeals.* A handler who is dissatisfied with the penalty assessed by the CCC contracting officer may file a written request for reconsideration of the assessment. Such request must be made to the CCC contracting officer no later than 15 days after the handler receives the notice of assessment. If the handler is dissatisfied with the determination of the contracting officer with respect to the reconsideration, the handler may appeal such determination by submitting a written notice of appeal to the Executive Vice President of CCC, within 15 days of the issuance of such determination by the contracting officer. Except as otherwise provided herein, such appeal shall be conducted in accordance with the appeal regulations set forth in Part 780 of this title.

(b) *Request for reductions of penalty*—(1) *Form of request.* A handler may request a reduction in the amount of the penalty which has been assessed. Such a request shall be treated as an appeal under paragraph (a) of this section, and must comply with the requirements of that paragraph. The handler may simultaneously contest liability for the penalty and, in the alternative, request that the penalty be reduced.

(2) *Reduction criteria.* If the Executive Vice President of CCC or his designee, determines that—

(i) The violation for which the penalty was assessed was minor, or was done unintentionally or unknowingly by the handler, and

(ii) That the handlers who made a good faith effort to comply fully with the terms and conditions of the program and

(iii) That a reduction in the amount of the penalty would not impair the effective operation of the price support program for peanuts, he may reduce the amount of the penalty, provided however that—

(A) The penalty shall not be reduced to less than an amount which is equal to 40 percent of the basic quota support rate for the applicable crop year times the quantity of peanuts involved in the violation and

(B) That the amount of any penalty resulting from the failure to export contract additional peanuts shall not be reduced.

There shall be no limitation on the amount by which an assessment of liquidated damages may be reduced.

§ 1446.140 Liens against peanuts on which a penalty is due.

(a) *Lien on peanuts.* Until the amount of any penalty which is imposed in accordance with this subpart is paid, a lien shall exist in favor of the United States for the amount of the penalty; such lien shall apply on the peanuts with respect to which such penalty is incurred, and on any other peanuts purchased or otherwise acquired in the same or subsequent marketing year in which the person liable for payment of such penalty has an interest.

(b) *Debt record.* The lien specified in paragraph (a) of this section shall be deemed to attach at the time the penalty is entered on the debt records which shall be maintained for this purpose by the associations.

(c) *List of peanut marketing penalty debts.* Each area marketing association shall maintain a debt record for all handlers indicating the amounts due from each handler. This list will be available for examination upon written request to the area association by any interested party.

§ 1446.141 Schemes and devices.

A handler who is determined by the Executive Vice President of CCC, or the association with the approval of the Executive Vice President, to have knowingly:

(a) Adopted any scheme or device which tends to defeat the purpose of the regulations of this subpart,

(b) Made any fraudulent representation, or

(c) Misrepresented any fact affecting a program determination shall be subject to a penalty which shall be assessed in such manner as is determined will correct for such scheme or device.

Pool Transfers

§ 1446.142 Producer transfer of additional loan peanuts to quota loans.

Producers may transfer Segregation 2 and Segregation 3 additional loan peanuts to the quota loan pool after the producer has completed marketing and returned his marketing card to the county office. Such transfer may not exceed the smaller of the effective farm poundage quota minus the production of Segregation 1 peanuts on the farm, or the undermarketing of quota peanuts shown on the farm marketing card: provided, that the pool proceeds due such producer from peanuts in any other pool shall be reduced by the amount of any losses to CCC on the peanuts so

transferred. The support values for any Segregation 2 peanuts so transferred shall be the support value for quota peanuts minus the damage discount published in the quota support schedule, and the support value for Segregation 3 peanuts shall be the support value for quota peanuts minus the applicable discount published in the quota support schedule. Producers who are eligible to transfer additional loan peanuts to the quota loan pool in accordance with the provisions of this section may apply for such transfers with the county office. The county office shall determine the quantity of undermarketings of quota peanuts and the quantity of additional peanuts which are eligible for transfer. The producer must indicate to the county office the net weight and applicable Form ASCS–1007 numbers for the peanuts to be transferred. Such pounds shall be considered as marketings of quota peanuts, the applicable ASCS–1007 shall be appropriately adjusted and the producer will be advanced the appropriate difference between the additional and quota support rates.

Paperwork Reduction

§ 1446.143 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 1446) have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560–0003, 0560–0006, 0560–0014, 0560–0015.

Signed at Washington, D.C. on June 13, 1986.

William C. Bailey,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–13721 Filed 6–13–86; 12:47 pm]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–79–AD; Amdt. 39–5337]

Airworthiness Directives: Avions Marcel Dassault-Breguet Aviation (AMD–BA) Model Falcon 10 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires testing of the automatic slat extension system operation, and wiring revisions, if necessary, of a leading edge slat selector valve on certain AMD–BA Model Falcon 10 series airplanes. This action is necessary to ensure proper extension of the leading edge slats in the event of a hydraulic system failure, and to reduce the potential for stalling the airplane.

EFFECTIVE DATE: July 24, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to AMD–BA Representative, 40 J.J.C., Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires a one-time test of the automatic extension of the leading edge slats on certain Falcon 10 airplanes for proper operation, and correction of any wiring discrepancies which may exist, was published in the **Federal Register** on August 12, 1985 (50 FR 32439).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Two comments were recieved, one of which expressed concurrence with the proposal. The other comment was from AMD–BA, the manufacturer of the airplane. AMD–BA pointed out that the discrepancy to be corrected is in a piece of equipment which can be removed from the airplane. Therefore, the test prescribed cannot be considered as a one-time test, but should be repeated each time the component, a leading edge slat selector valve, is replaced, unless the replacement has already been tested and is so identified. This requirement is clearly stated in the AMD Service Bulletin F10–27–31(–247). The FAA concurs and, based on further reports or additional information, may initiate further rulemaking on this subject.

Minor editorial changes, which have no impact on the scope of this AD, have been made to clarify accomplishment instructions.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 158 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required tests, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,320.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance ($40 per airplane). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

§ 39.13 [Amended]

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

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

2. By adding the following new airworthiness directive:

Avions Marcel Dassault-Breguet Aviation: Applies to Model Falcon 10 series airplanes, serial numbers 1 through 206 inclusive, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To detect an incorrectly wired automatic leading edge slat selector valve, accomplish the following in accordance with AMD–BA Service Bulletin F10–27–31(–247), dated July 18, 1984, unless previously accomplished.

A. Test the automatic leading edge slat extension system, and revise the leading edge slat selector valve wiring, if necessary.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

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

All persons affected by this directive, who have not already received the appropriate service document from the manufacturer, may obtain copies upon request to the AMD-BA Representative, 40 J.J.C., Teterboro Airport, Teterboro, New Jersey 07608. This document may be examined at the FAA, Northwest Mountain, Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle Washington.

This amendment becomes effective July 24, 1986.

Issued is Seattle, Washington, on June 10, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-13555 Filed 6-16-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-132-AD; Amdt. 39-5335]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires inspection for adequate self-locking capability of the nuts that support the nacelle strut attach fittings on Boeing Model 747 series airplanes, and replacement, if necessary. The service bulletin referenced in the AD incorrectly omitted four airplanes from the applicability of part of the required inspections. This action corrects this omission and is necessary to ensure proper inspection of those airplanes.

EFFECTIVE DATE: July 7, 1986.

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

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

SUPPLEMENTARY INFORMATION: The FAA issued AD 86-05-11, Amendment 39-5255 (51 FR 8479; March 12, 1986), to require inspection and replacement, if necessary, of certain self-locking nuts on Boeing Model 747 series airplanes, in accordance with Boeing Alert Service Bulletin 747-57A2233, Revision 1, dated January 24, 1986.

That service bulletin mistakenly included four airplanes in Group 1, as identified in the effectivity of the service bulletin. By the terms of the accomplishment instructions of the service bulletin, Group 1 airplanes are not subject to the described inspection of the inboard strut inboard attach fitting nuts. As a result of discovering this error, Boeing has issued Alert Service Bulletin 747-57A2233, Revision 2, dated May 9, 1986, which reclassifies the four affected airplanes into Group 3; Group 3 airplanes are subject to that inspection.

Boeing Alert Service Bulletin 747-57A2233, Revision 2, contains minor editorial revisions which merely serve to clarify accomplishment instructions, and have no additional economic impact on operators.

Since this condition is likely to exist or develop on other airplanes of this same type design, the existing airworthiness directive is being amended to ensure inspection for adequate self-locking capability, of the nuts that support the nacelle strut attach fittings and replacement, if necessary, of all affected airplanes in accordance with Boeing Alert Service Bulletin 747-57A2233, Revision 2, dated May 9, 1986.

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

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By amending AD 86-05-11, Amendment 39-5255 (51 FR 8479; March 12, 1986), by revising the applicability statement, paragraph A., and paragraph B. to read as follows:

Boeing.—Applies to all Model 747 series airplanes, certificated in any category, listed in Boeing Alert Service Bulletin 747-57A2233, Revision 2, dated May 9, 1986.

To detect faulty self-locking nuts that could lead to separation of an engine, accomplish the following, unless already accomplished:

A. Within 100 landings after the effective date of this AD, perform a one-time inspection of the outboard attach fitting nuts of all nacelle struts for adequate self-locking torque of the nuts, part number BACN10HR162, in accordance with Boeing Alert Service Bulletin 747-57A2233, Revision 2, dated May 9, 1986, or later FAA-approved revisions.

B. Within 600 landings after the effective date of this AD perform a one-time inspection of the inboard attach fitting nuts of all nacelle struts for adequate self-locking torque of the nuts, part number BACN10HR162, in accordance with Boeing Alert Service Bulletin 747-57A2233, Revision 2, dated May 9, 1986, or later FAA-approved revisions.

This amendment becomes effective July 7, 1986.

Issued in Seattle, Washington, on June 10, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-13557 Filed 6-16-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-72-AD; Amdt. 39-5336]

Airworthiness Directives; Saab-Fairchild Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires modification of the rudder limiter mechanism to reduce the range of travel on certain Model SF-340A airplanes. This action is necessary to assure that structural limits are not exceeded with maximum rudder deflection at high speeds. This condition, if not corrected, could lead to failure of the rudder and loss of directional control.

EFFECTIVE DATE: July 24, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Saab-Fairchild Corporation, Product Support, S.58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires modification of the rudder limiter mechanism to reduce the range of travel on certain Model SF-340A airplanes, was published in the **Federal Register** on September 5, 1985 (50 FR 36095).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($160.). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

§ 39.13 [Amended]

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

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

2. By adding the following new airworthiness directive:

Saab-Fairchild: Applies to Model SF-340A series airplanes, serial numbers 340A-003 to -048 inclusive, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To prevent rudder overloads, accomplish the following, unless already accomplished:

A. Modify the rudder limiter in accordance with Saab-Fairchild Service Bulletin SF-340-27-018, dated May 10, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-1133, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Saab-Fairchild Corporation, Product Support, S.58188, Linkoping, Sweden. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 24, 1986.

Issued in Seattle, Washington, on June 10, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 13556 Filed 6-16-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASW-7]

Amendment of Transition Area; Bonham, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Bonham, TX. The intended effect of the amendment is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Jones Field Airport, Bonham, TX. This amendment is necessary to ensure segregation of aircraft using the new approach procedure under visual flight rules (VFR) and other aircraft under instrument flight rules (IFR).

EFFECTIVE DATE: 0901 UTC, October 23, 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 March 7, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide an additional 700-foot transition area (controlled airspace) (51 FR 7954).

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 transition area at Bonham, TX. This action will provide additional controlled airspace necessary to accommodate a new SIAP using the new Bonham NDB (HJM). This will ensure segregation of aircraft operating under IFR conditions and other aircraft operating under VFR.

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

PART 71—[AMENDED]

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Bonham, TX [Amended]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Jones Field Airport, Bonham, TX, (latitude 33°36'41" N., longitude 96°10'45" W.) and within 4.5 miles each side of the 025-degree radial of the Blue Ridge VORTAC extending from the 6.5-mile radius area to 42.5 miles northeast of the VORTAC, and within 2.5 miles each side of the 346-degree bearing from the Bonham NDB (latitude 33°46'50" N., longitude 96°10'33" W.) extending from the 6.5-mile radius to 8.5 miles north of the Bonham NDB.

Issued in Fort Worth, TX, on June 3, 1986.

Richard L. Failor,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 86–13561 Filed 6–16–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 75

[Airspace Docket No. 86–AWA–13]

Establishment of Jet Route J-212—Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Jet Route J–212 in the vicinity of Buckeye, AZ. It is taken to help reduce traffic complexity in that area and enhance the flow of traffic in the Blythe, AZ, and Phoenix, AZ, areas. It is also expected to help reduce departure and arrival delays and enhance aviation safety.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

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

SUPPLEMENTARY INFORMATION:

History

On March 26, 1986, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish new Jet Route J–212, located in the vicinity of Blythe, AZ, and Phoenix, AZ (51 FR 10409). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments objecting to the proposal were received from the Departments of the Air Force and Navy. Those comments are examined and discussed below.

Air Force Objections. The Air Force objection was initiated by the 832nd Air Division at Luke Air Force Base in a letter dated April 24, 1986, which was forwarded to the Air Force representative at FAA's Western Pacific Region. The 832nd Air Division objected to ASD 86–AWA–13 and other associated docket/proposals affecting airspace in the Phoenix, AZ, area. In its endorsement of the objection, the regional Air Force representative viewed this and other related airspace proposals as a serious detriment to aviation safety.

Like the Navy, the Air Force objections to ASD 86–AWA–13 were tied to what it considered a much larger issue. This larger issue was similarly addressed in the Air Force comments to ASD 85–AWA–48. ASD 85–AWA–48 is a companion airspace docket that realigns jet routes in the same area and has the same effective date. As perceived by the Air Force, the broader issue was FAA's alleged support of civilian air carrier transportation needs and movements to the detriment and reduction of military training airspace and the military mission. The position of the Air Force was that this docket, ASD 85–AWA–48 and "other" (special use airspace (SUA)) FAA actions in this area, combined, would have an adverse effect on the Air Force mission. The Air Force objections to ASD 85–AWA–48 and its perception of the larger issue are discussed below.

The specific objections of the Air Force to ASD 86–AWA–13 were that the continued imposition of new jet routes, airways, and arrival/departure flow at the expense of essential Department of Defense (DOD) missions can no longer be tolerated. The Air Force further stated that the objective stated in the proposal "reduced coordination and controller workload" appears to have assumed top priority in developing these interrelated proposals. Controller staffing should be sufficient to safely and efficiently accommodate all missions, military and civilian, without reduction in service to any airspace user. This is the intent of the Federal Aviation Act of 1958. The concluding comment was that continued addition of routing designed primarily to support civil air carrier movement and the frequent resultant reduction in military training airspace can no longer be condoned.

Navy Objections. Like those of the Air Force, the Navy's objections to the new jet routes applied generally to ASD 85–AWA–48 and certain other SUA actions. Accordingly, the Navy's comments were combined in a single letter addressing this docket and ASD 85–AWA–48 which included allegations of adverse effects from SUA actions. Also, as with the Air Force, the Navy stated its objections in a larger frame of reference which it described as the continued erosion of the military's SUA. The Navy's objections to this docket, on three separate points, were as follows:

(a) This specific action is an integral part of several actions being designed to accomplish one particular action; i.e., the Arlin arrival into Phoenix Sky Harbor Airport.

(b) The proposal, on its own, would not accomplish all of the benefits stated in the notice.

(c) The stated purpose of the several proposals to "improve traffic flows, reduce coordination and controller workload" indicates that military interests are not being considered.

Discussion of Comments

Upon consideration of the objections, the FAA has determined that there are no adverse impacts to the military mission, either Air Force or Navy; to military training missions; or to aviation safety.

The establishment of Jet Route J–212 imposes no change whatsoever on any SUA in the area, whether Military Operation Areas (MOA), Air Traffic Control Assigned Airspace (ATCAA), or restricted areas. Establishment of J–212 is not dependent upon a reconfiguration of SUA. It can function and can be independent of any SUA actions.

Also, the FAA does not agree that the negative effects result collectively from this docket, ASD 85–AWA–48, and other SUA actions. ASD 85–AWA–48 realigns certain jet routes in the Phoenix area. Those routes, of themselves or in conjunction with other actions, have no direct or indirect effects on SUA or military activity in the area.

The FAA believes that since the jet route actions have no bearing on SUA, discussion of SUA actions in the southwestern Arizona and southeastern California area is inappropriate. However, since the Air Force and Navy make SUA considerations an inseparable factor in their stated position, the following is provided.

SUA actions in this or any other area of the United States, including reconfigurations, are initiated under authority of the Federal Aviation Act of 1958, as amended, and executed under implementing FAA policies and procedures. These policies and procedures require full and complete coordination with the DOD prior to implementation. Such coordination did and is now occurring with respect to SUA areas in the vicinity of the realigned and established jet routes. The following recaps major coordination efforts thus far:

(a) On August 7, 1985, negotiations were initiated with Luke AFB concerning airspace designation.

(b) Constructive negotiations resulted in agreement that a revision of the existing MOA/ATCAA airspace would be a benefit to both organizations.

(c) On November 6, 1985, the FAA Western Pacific Region sent to FAA Headquarters a proposal to redefine the Bagdad I MOA and Gladden I MOA and to establish a new Drake MOA, effective May 8, 1986.

(d) On January 22, 1986, the Western Pacific Region requested cancellation of the establishment of the Drake MOA per an Air Force request.

(e) On February 12, 1986, the Bagdad I and Gladden I MOA proposals were sent to the FAA Headquarters to change the affected aeronautical charts to be effective May 8, 1986.

(f) The Western Pacific Region is presently looking at two airspace actions that will alter SUA in the Yuma area:

(1) Realignment of Arlin arrival route to Phoenix. The proposed realigned route would cause an approximate 2 ¾-mile reduction in the northern parts of R–2306B and R–2308A.

(2) Establishment of a direct jet route between the Thermal and Gila Bend VORTACs. The proposed route would go directly through the center of the Yuma restricted areas but the route would not be available during daylight hours. At this time, the FAA emphasizes these arrival and jet routes are under preliminary consideration and have not been circulated for public comment. In accordance with all FAA actions under the Federal Aviation Act and implementing policies and procedures, no final action will be taken without coordination with the DOD.

The Air Force and Navy also objected on other grounds; i.e., the proposal—

(a) Could not reduce coordination and controller workload without reducing service to the military; and

(b) Would not enhance safety.

The FAA does not agree. The jet route realignment and establishment actions are the result of analysis and study of air traffic and air traffic flows made by the Los Angeles and Albuquerque Air Route Traffic Control Centers (ARTCC). FAA controllers designed the traffic flow to optimize use of the limited airspace available to them. Controllers work all the traffic, including military traffic within this airspace. Scenarios with the realigned jet routes were run on simulators with a marked improvement in traffic flow and a reduction of communication, coordination and aircraft restriction requirements. As designed by Air Traffic Control (ATC) the realignment actions are expected to serve as follows:

(a) Realignment of J–4 between San Simon and Twentynine Palms will provide a westbound route which will service Los Angeles International Airport.

(b) The realignment of J–104 between Gila Bend and Twentynine Palms will provide a westbound route that will blend with the flow to either Twentynine Palms or Palm Springs VORTAC's.

(c) The realignment of J–50 will provide a route that will ensure that en route aircraft are well above the arrival traffic at point of crossover.

(d) Extension of J–169 from Blythe to Stanfield will provide an eastbound jet route that will merge with J–4 and J–50 at Stanfield, bypassing Gila Bend.

(e) Phoenix departures will be cleared via either J–4, Twentynine Palms or the jet route to Palm Springs, depending on destination.

(f) J–212 will provide a westbound route that will service Palm Springs and airports in the greater Los Angeles area. This route will service trafffic overflying Phoenix and keep it segregated from traffic between Phoenix and Los Angeles/San Diego.

These actions are designed to reduce greatly the complexity now encountered at Blythe by providing for eastbound flow over Blythe and moving the westbound traffic to the north. The FAA believes these efforts will make a substantial contribution to the more efficient flow of the heavy traffic now experienced in the area. An increased efficiency of traffic flow is also expected to result in a decrease in controller workload. The FAA also believes that the military will be a major beneficiary. With an improved traffic flow, it is expected that military traffic will be expedited to and from areas of operation. In addition, in consideration of the improved flow and organization of both en route and terminal traffic in a high density traffic area, the improved traffic flow environment is expected to be an enhancement to overall aviation safety.

In summary, jet route realignment actions are expected to improve ATC services to all users, including the military. SUA and other procedural actions which the military maintains cannot be disassociated from jet route realignment actions are and will continue to be coordinated fully with the DOD prior to implementation. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations establishes Jet Route J–212 between Stanfield, AZ, to Palm Springs, CA. The purpose of J–212 is to establish a route for traffic overflying Phoenix and keep this traffic segregated from traffic

between Phoenix and Los Angeles/San Diego.

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 75

Aviation safety, Jet routes.

Adoption of the Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

1. 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]

2. Section 75.100 is amended as follows:

J-212 [New]

From Stanfield, AZ; Buckeye, AZ; INT Buckeye 285° and Palm Springs, CA, 091° radials; to Palm Springs.

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

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-13564 Filed 6-16-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 85-AWA-48]

Realignment and Revocation of Jet Routes; Change of Effective Date

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; change of effective date and response to comments.

SUMMARY: This action corrects the effective date for Airspace Docket No. 85-AWA-48 from July 3, 1986, to August 28, 1986. Airspace Docket No. 85-AWA-48 realigns Jet Routes J-4, J-104, J-169, and J-50 and revokes J-181. The change in the implementation date is made to coincide with the effective date of a companion airspace docket (ASD 86-AWA-13) which establishes Jet Route J-212 in the same area. Additionally, the correction to final rule provides the FAA an opportunity to respond to comments received from the Departments of the Air Force and Navy after the close of the comment period.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

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

SUPPLEMENTARY INFORMATION:

History

On February 24, 1986, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Routes J-4, J-104, J-169, and J-50. In addition, the FAA proposed to revoke J-181 (51 FR 6420). J-181 was proposed for revocation because it is not used by air traffic control (ATC). The summary of the notice noted that the actions were proposed in the interest of flight safety and the improvement of ATC efficiency and services to users.

The FAA proposal stipulated that comments must be received on or before April 11, 1986. On April 23, 1986, a final rule was issued effective July 3, 1986 (51 FR 15310). In the rule, it was noted that no comments were received and that except for minor editorial changes, the amendment to Part 75 was the same as that proposed.

Although the FAA received no comments by April 11, 1986, close of comment period, the FAA's Western Pacific Regional Office subsequently received written objections to the proposal from the Departments of the Air Force and Navy. The Air Force objection was initiated by the 832nd Air Division at Luke Air Force Base in a letter dated April 7, 1986, which was forwarded to the Air Force Representative at FAA's Western Pacific Region. The FAA's Western Pacific Regional Air Traffic Division received the Air Force objection from the Air Force Regional Representative on April 14, 1986. The objection from the Navy was submitted by letter dated April 14, 1986, from the Navy Western Pacific Regional Representative and was received by FAA's regional air traffic division on April 16, 1986. The Navy's objections were submitted as a combined response to this docket and ASD 86-AWA-13. ASD 86-AWA-13 is an FAA airspace action to establish a new jet route. (J-212) in the same general area as the realigned jet routes. Subsequent to the closing date, both the Air Force and Navy objections were reviewed and forwarded to FAA's Airspace and Air Traffic Rules Branch, Washington, D.C. for disposition.

The Air Force objected to the proposal on the general basis of flight safety considerations and requested that the final rule be rescinded pending resolution of the issue. The Navy objected on five counts. Details of the Air Force and Navy objections are provided below.

Air Force Objections. By its letter dated April 7, 1986, the Air Force specifically registered objection to the jet route realignment actions in ASD 85-AWA-48. However, as with the Navy, the Air Force objections to ASD 85-AWA-48 were tied to what it considered a much larger issue. This larger issue was similarly addressed and expanded upon in the Air Force comments to ASD-86-AWA-13. As perceived by the Air Force, the broader issue was FAA's alleged support of civilian air carrier transportation needs and movements to the detriment and reduction of military training airspace and the military mission. The position of the Air Force was that this docket, ASD 86-AWA-13 and "other" FAA actions in this area, when taken together, would have an adverse effect on the Air Force mission.

The specific objections of the Air Force to ASD 85-AWA-48 were that the continued proliferation of airways/jet routes in close proximity to and along the borders of Special Use Airspace (SUA) or Air Traffic Control Assigned Airspace (ATCAA) do not appear to enhance safety. With military SUA already at minimal size for safe operations, further reductions required to accommodate an ongoing program of establishing additional civil routings will adversely impact military training and reduce safety.

The Air Force incorporated these objections in a statement of the larger issue which it addressed in its comments to companion ASD 86-AWA-13. As stated, the realigned jet routes (this docket), in conjunction with the establishment of a new jet route (ASD 86-AWA-13), and "other" actions have the following effects:

(a) Six jet routes would lie and would cross each other within a 30-nautical-mile wide corridor with SUA for military operations to the north and to the south. The Air Force said it is difficult to see how the six airways in a 30-nautical-mile strip can improve traffic flow or facilitate movement of more aircraft.

(b) Recently, military airspace was reduced to accommodate additional and new arrival/departure routes to/from Phoenix, AZ. The Air Force said it could not tolerate continued imposition of new jet routes, airways, and arrival/departure routes solely to facilitate air carrier movements and flow at the expense of Department of Defense (DOD) missions.

(c) The stated FAA objective in the interrelated proposals is reduced coordination and controller workload. These seemed to have assumed top priority in developing these airspace actions. An area such as this with its volume of traffic and problems must be manned to safely and efficiently accommodate all missions, military and civil, without reduction in service to any airspace user. This is the intent of the Federal Aviation Act of 1958.

Navy Objections. Like those of the Air Force, the Navy's objections to the realignment of jet routes also applied to ASD 86–AWA–13 and other alleged associated actions. Also, like the Air Force, the Navy set their objections in a larger frame of reference which it described as the continued erosion of the military's SUA. The Navy's objection to this docket, on five separate points, were as follows:

(a) The realignment proposal is only one part of four separate actions either being proposed or considered for separate proposals to support one action, the Arlin arrival into Phoenix Sky Harbor Airport. The other three proposals are—

(1) The establishment of a new jet route (ASD 86–AWA–13);

(2) Amending the Yuma SUA to provide a buffer zone around the Arlin arrival; and

(3) Establishment of another jet route that will impact not only the Yuma SUA but also R–2507 plus the various Military Operations Areas (MOA)/ATCAA's surrounding these areas.

(b) If all four actions are implemented, the Navy fails to see how it will promote safety since lateral separation between the SUA and the Arlin arrival are the absolute minimum required for spacing for en route traffic. Nowhere in any of the proposals is separation for maneuvering traffic addressed.

(c) The Navy fails to see how the realignment actions will permit more efficient use of the airspace unless it means putting more aircraft in the same amount of airspace at the same time. This proposal, combined with the other three, will probably be more efficient if it means saving money and time for the commercial air carriers at the expense of the military's loss of airspace.

(d) The Navy fails to see how the proposal will allow more flexibility for military operations, as stated in the proposal. If the proposal is combined with the other actions, the Navy visualizes a severe limitation to the flexibility for military operations due to the alterations of the Yuma SUA.

(e) The Navy does not see how it could object to this proposal if it were a stand-alone action. However, the proposal's innocence is quite deceiving in that it is only one of four parts of the entire picture.

Discussion of Comments

Upon examination of the objections and ASD 85–AWA–48, the FAA has determined that there are no adverse impacts to—

(a) The military mission, either Air Force or Navy;

(b) Military training missions; or

(c) Aviation safety.

Contrary to allegations of effects on and to military operations, the realignment of jet routes imposes no change whatsoever on any SUA in the area, whether MOA's ATCAA's or restricted areas. The realignment and the resultant use of Jet Routes J–4, J–104, J–169, J–50 are not dependent upon a reconfiguration of SUA. They can function and can be independent of any SUA actions.

Also, the FAA cannot agree on the alleged larger issue; i.e., that the negative effects result collectively from this docket, ASD 86–AWA–13 and other SUA actions. ASD 86–AWA–13 establishes Jet Route J–212 between Stanfield, AZ and Palm Springs, CA. That route, of itself, or in conjunction with other actions has no direct or indirect effects on SUA or military activity in the area.

The FAA believes that since the jet route actions have no bearing on SUA, discussion of SUA actions in the southwestern Arizona and southeastern California area is inappropriate. However, since the Air Force and Navy make SUA considerations an inseparable factor in their stated position. the following is provided

SUA actions in this or any other area of the United States, including reconfigurations, are initiated under authority of the Federal Aviation Act of 1958, as amended, and executed under implementing FAA policies and procedures. These policies and procedures require full and complete coordination with the Department of Defense prior to implementation. Such coordination did occur and is now occurring with respect to SUA areas in the vicinity of the realigned and established jet routes. The following recaps major coordinative efforts thus far:

(a) On August 7, 1985, negotiations were initiated with Luke AFB concerning airspace designation.

(b) Constructive negotiations resulted in both parties (FAA/DOD) agreeing that a revision of the existing MOA/ATCAA airspace would be a benefit to both organizations.

(c) On November 6, 1985, FAA's Western Pacific Region sent to FAA Headquarters a proposal to redefine the Bagdad I MOA, Gladden I MOA, and establish a new Drake MOA requesting an effective date of May 8, 1986.

(d) On January 22, 1986, the Western Pacific Region requested cancellation of the establishment of the Drake MOA per the Air Force request.

(e) On February 12, 1986, the Bagdad I and Gladden I MOA proposals were sent to the FAA Headquarters to change the affected aeronautical charts to be effective May 8, 1986.

(f) The Western Pacific Region is presently looking at two airspace actions that will alter SUA in the Yuma area—

(1) Realignment of Arlin arrival route to Phoenix. The realigned route would cause an approximate 2¾-mile reduction in the northern parts of R–2306B and R–2308A.

(2) Establishment of a direct jet route between the Thermal and Gila Bend VORTAC's. The proposed route would go directly through the center of the Yuma restricted areas but the route would not be available during daylight hours. At this time, the FAA emphasizes these arrival and jet routes have not yet been proposed for public comment. In accordance with all FAA actions under the Federal Aviation Act and implementing policies and procedures, no final action will be taken unless and until full and complete coordination is effected with the DOD. Accordingly, in consideration of the public law and procedural requirements, it is premature to claim negative adverse effects to the military mission.

The Air Force and Navy also objected on other bases; i.e., the proposal—

(a) Would not improve traffic flows in the area;

(b) Would not increase airspace use efficiency;

(c) Would not allow the military more flexibility for operations;

(d) Would not reduce coordination and controller workload without an intimated reduction in service to the military and

(e) Would not enhance safety.

The FAA does not agree. The jet route realignment and establishment actions are the result of analysis and study of air traffic and air traffic flows made by the Los Angeles and Albuquerque Air Route Traffic Control Centers. FAA controllers designed the traffic flow to optimize use of the limited airspace available to them. Controller work all the traffic, including military traffic within this airspace. Scenarios with the realigned jet routes were run on simulator with a marked improvement in traffic flow and a reduction of communication, coordination and aircraft restriction requirements. As designed by ATC the realignment actions are expected to serve as follows:

(a) Realignment of J–4 between San Simon and Twentynine Palms will provide a westbound route which will service Los Angeles International Airport.

(b) The realignment of J–104 between Gila Bend and Twentynine Palms will provide a westbound route that will blend with the flow to either Twentynine Palms or Palm Springs VORTAC's.

(c) The realignment of J–50 will provide a route that will ensure that en route aircraft are well above the arrival traffic at point of crossover.

(d) Extension of J–169 from Blythe to Stanfield will provide an eastbound jet route that will merge with J–4 and J–50 at Stanfield, bypassing Gila Bend.

(e) Phoenix departures will be cleared via either J–4, Twentynine Palms or the jet route to Palm Springs, depending on destination.

These actions are designed to reduce greatly the complexity now encountered at Blythe by providing for eastbound flow over Blythe and moving the westbound traffic to the north. The FAA believes these efforts will make a substantial contribution to the more efficient flow of the heavy traffic now experienced in the area. An increased efficiency of traffic flow is also expected to result in a decrease in controller workload. The FAA also believes that the military will be a major beneficiary. With an improved traffic flow, it is expected that military traffic will be expedited to and from areas of operation. In addition, in consideration of the improved flow and organization of both en route and terminal traffic in a high density traffic area, the improved traffic flow environment is expected to be an enhancement to overall aviation safety.

In summary, jet route realignment actions are expected to improve ATC services to all users without restricting the military. SUA and other procedural actions which the military maintains cannot be disassociated from jet route realignment are and will continue to be coordinated fully with the DOD prior to implementation.

In consideration of the above, the FAA has determined that the effective date of ASD 85–AWA–48 should be changed to August 28, 1986.

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 75

Aviation safety, Jet routes.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 86–9013, as published in the **Federal Register** on April 23, 1986, (51 FR 15310) is corrected by revising the effective date to August 28, 1986.

Issued in Washington, DC, on June 4, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–13563 Filed 6–16–86–8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 105

[Docket No. 24873; Admt. 105–9]

Requirements for Parachute Jumps in Terminal Control Areas and Reporting Altitudes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the requirement to obtain an air traffic control (ATC) authorization for a nonemergency parachute jump in or into terminal control areas (TCA). Such authorization is currently required for other categories of controlled airspace and serves to prevent an uncontrolled jump in areas of heavy aircraft traffic. In addition, this action requires an aircraft operator and parachutist, as appropriate, to provide notice of altitude information in terms of mean sea level (MSL). Currently, altitudes are sometimes reported in levels above the ground, leading air traffic controllers and other pilots to misunderstand the altitude of the jump relative to other flight activity in the area.

EFFECTIVE DATE: July 17, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Falsetti, Airspace and Air Traffic Rules Branch, 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

Parachute Jumping in Terminal Control Areas

On December 27, 1985, the FAA published a notice of proposed rulemaking which proposed that an aircraft operator obtain an ATC authorization prior to making a nonemergency parachute jump in or into a terminal control area. The same notice proposed that parachute jump altitude information be submitted to the FAA in terms of mean sea level rather than above ground level (50 FR 52933, Notice 85–26).

With respect to jumping in TCA's, it was explained in the preamble of the notice that the TCA Program does not presently address the problem of separating TCA aircraft traffic from parachute jumpers who, because of the lack of a requirement in Part 105, may jump in or into TCA airspace without prior ATC authorization. Presently, such a requirement pertains to certain other airspace areas, namely, airport radar service areas, control zones, and positive control areas. Although ATC authorization is still required to enter a TCA, once this has been obtained, jumping in or into a TCA may begin at pilot or jumper prerogative. This is considered to be operationally unacceptable since unauthorized, uncontrolled parachute jumping is incompatible with the nature of TCA airspace. In TCA airspace, ATC separation services are meant to be provided to all airspace users to reduce the probability of midair collisions.

Altitude Notice Information

It was also explained in the preamble to the notice that currently, in addition to authorization, notice is required for jumps in all airspace. In all cases, certain specific information is required to be submitted with the notice. One item to be included in jump information is the altitude in terms of above ground level (AGL) at which jumping will take place.

In the notice, it was explained that the requirement to submit altitude information in terms of AGL can create the potential for confusion. Some pilots of jump aircraft have reported actual operating altitude to ATC while in flight in terms of AGL rather than MSL. It is possible this has occurred because of the notice requirement which states that altitude information must be given in terms of AGL. The confusion factor could be hazardous. In the flight environment, flight altitudes are expressed in terms of MSL. Therefore, controllers may naturally expect that altitudes reported by jump aircraft are also in terms of MSL. The provision of altitude information in terms of AGL can create the serious potential for a midair collision between parachutists, the aircraft carrying parachutists, and other aircraft operating in the vicinity.

Public Comment

Four comments were received in response to the proposal. Respondents were the Air Traffic Control Association, Inc., the Air Line Pilots Association, the Port Authority of New York, and the Air Transport Association.

Three of the four commenters endorsed the proposal without change or qualification. The Air Line Pilots Association concurred and went further by saying that the rule should be expanded to require ATC authorization for parachute jumps in or into an airport traffic area. Expansion of the rule to apply to airport traffic areas is not within the scope of this rulemaking action. If any future consideration were to be given in this area, it would be preceded by public notice.

This action entails a substitution of terms in an existing notice requirement and application of an ATC authorization requirement to make a nonemergency jump in a TCA. Little or no impact is seen regarding the change in notice terms since no new requirement is imposed and since the substitution of terms is seen as making no greater economic, energy, cost, or reporting demand on parachutists. The ATC authorization requirement is also seen as having minimal impact. This provision applies to a limited amount of nonemergency sport parachutist operations. There are presently 23 TCA's in the country with no current plans for increasing their number. Within the TCA's there are relatively few published parachute jumping areas, usually two or less in each TCA. The areas that are published are generally located away from the primary airport and from primary arrival and departure routes. In addition, the rule would make no change to the requirement that ATC authorization be obtained before entry into a TCA. It would only require that an ATC authorization be obtained before jumping begins. The rule would help maintain the integrity of the TCA by ensuring that parachute operations are conducted free of traffic conflicts and are safely integrated into a positive separation environment that includes all other airspace activity. A regulatory evaluaton of this proposal has been placed in the docket.

For the reasons set forth in the preamble to this rule, the FAA has determined that this document involves a regulation which is (1) not major under Executive Order 12291, and (2) not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979); and I certify that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities. A copy of the regulatory evaluation prepared for this action may be obtained by contacting the person identified above under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 105

Parachuting, Air Traffic control.

The Amendment

PART 105—[AMENDED]

Accordingly, Part 105, Subpart A of the Federal Aviation Regulations (14 CFR Part 105), is amended as follows:

1. The authority citation for Part 105 is revised to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1421; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By revising the title of § 105.21 to read as follows:

§ 105.21 Jumps Into or Within Positive Control Areas and Terminal Control Areas

3. In § 105.21, paragraph (a) is revised to read as follows:

§ 105.21 Jumps Into or Within Positive Control Areas and Terminal Control Areas

(a) No person may make a parachute jump, and no pilot in command of an aircraft may allow a parachute jump to be made from that aircraft, in or into a positive control area or terminal control area without, or in violation of, an authorization issued under this section.

* * * * *

4. In § 105.25, paragraph (a)(4) is revised to read as follows:

§ 105.25 Information Required, and Notice of Cancellation or Postponement of Jump

(a) * * *

(4) The altitudes above mean sea level at which jumping will take place.

* * * * *

Issued in Washington, D.C. on June 9, 1986.

Donald D. Engen.

Administrator.

[FR Doc. 86-13553 Filed 6-16-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt C-3185]

John C. Anderson; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a former official of Credit Establishing Bureau, a Detroit-based credit repair clinic that went out of business in February, 1984, from falsely representing in the future that he can improve credit records and arrange for consumers to receive major credit cards.

DATE: Complaint and Order issued May 27, 1986.[1]

FOR FURTHER INFORMATION CONTACT: FTC/I-500, Kathleen V. Buffon, Washington, D.C. 20580, (202) 724-1186.

SUPPLEMENTARY INFORMATION: On Thursday, Jan. 9, 1986, there was published in the **Federal Register**, 51 FR 967, a proposed consent agreement with analysis In the Matter of John C. Anderson, individually and as a former

[1] Copies of the Compliant and the Decision and Order are available for the Commission's Public Reference Branch, H-130, 6th St. and Pa. Ave., NW., Washington, DC 20580.

partner trading and doing business as Credit Establishing Bureau, formerly a partnership, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form or order..

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.15 Business status, advantages, or connections; 13.15–30 Connections or arrangements with others; § 13.70 Fictitious or misleading guarantee; § 13.73 Formal regulatory and/or statutory requirements; § 13.205 Scientific or other relevant facts. Subpart—Collecting, Assembling, Furnishing, or Utilizing Consumer Reports: § 13.382 Collecting, assembling, furnishing, or utilizing consumer reports; 13.382–1 Confidentiality, accuracy, relevancy, and proper utilization; 13.382–1(a) Fair Credit Reporting Act; 13.382–5 Formal regulatory and/or statutory requirements; 13.382–5(a) Fair Credit Reporting Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–37 Formal regulatory and/or statutory requirements; 13.533–45 Maintain records. Subpart—Failing to Comply with Affirmative Statutory Requirements: § 13.1048 Failing to comply with affirmative statutory requirements; 13.1048–10 Fair Credit Reporting Act. Subpart—Misrepresenting Onself and Goods—Business Status, Advantages or Connections: § 13.1395 Connections and arrangements with others; § 13.1417 Financing activities.

List of Subjects in 16 CFR Part 13

Credit improvement services, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock.

Secretary.

[FR Doc. 86–13599 Filed 6–16–86; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Dkt. C-3186]

Peter S. Everts; Prohibited Trade Practices, and Affirmative, Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a former official of Credit Establishing Bureau, a Detroit-based credit repair clinic that went out of business in February, 1984, from falsely representing in the future that he can improve credit records and arrange for consumers to receive major credit cards.

DATE: Complaint and Order issued May 27, 1986.[1]

FOR FURTHER INFORMATION CONTACT: FTC/I–500, Kathleen V. Buffon, Washington, DC 20580 (202) 724–1186.

SUPPLEMENTARY INFORMATION: On Thursday, Jan. 9, 1986, there was published in the **Federal Register**, 51 FR 967, a proposed consent agreement with analysis In the Matter of Peter S. Everts, individually and as a former partner trading and doing business as Credit Establishing Bureau, formerly a partnership, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly; § 13.10 Advertising falsely or misleadingly; § 13.15 Business status, advantages, or connections; 13.15–30 Connections or arrangements with others; § 13.70 Fictitious or misleading guarantee; § 13.73 Formal regulatory and/or statutory requirements; § 13.205 Scientific or other relevant facts. Subpart—Collecting, Assembling, Furnishing, or Utilizing Consumer Reports: § 13.382 Collecting, asembling, furnishing, or utilizing consumer reports; 13.382–1 Confidentiality, accuracy, relevancy, and proper utilization; 13.382–1(a) Fair Credit Reporting Act; 13.382–5 Formal regulatory and/or statutory requirements; 13.382–5(a) Fair Credit Reporting Act. Subpart—Corrective Action and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–37 Formal regulatory and/or statutory requirements; 13.533–45 Maintain records. Subpart—Failing to Comply with Affirmative Statutory Requirements; § 13.1048 Failing to comply with affirmative statutory requirements; 13.1048–10 Fair Credit Reporting Act. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections; § 13.1395 Connections and arrangements with others; § 13.1417 Financing activities.

List of Subjects in 16 CFR Part 13

Credit improvement services, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

Emily H. Rock,

Secretary.

[FR Doc. 86–13580 Filed 6–16–86; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th St. and Pa. Ave., NW., Washington, DC 20580.

16 CFR Part 13

[Dkt. C-3187]

Victor J. Hakim; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting, unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a former official of Credit Establishing Bureau, a Detroit-based credit repair clinic that went out of business in February, 1984, from falsely representing in the future that he can improve credit records and arrange for consumers to receive major credit cards.

DATE: Complaint and Order issued May 27, 1986.[1]

FOR FURTHER INFORMATION CONTACT: FTC/I–500, Kathleen V. Buffon, Washington, D.C. 20580, (202) 724–1186.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th St. and Pa. Ave., NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On Thursday, Jan. 9, 1986, there was published in the **Federal Register**, 51 FR 967, a proposed consent agreement with analysis In the Matter of Victor J. Hakim, individually and as a former partner trading and doing business as Credit Establishing Bureau, formerly a partnership, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 1315 Business status, advantages, or connections; 13.15–30 Connections or arrangements with others; § 13.70 Fictitious or misleading guarantee; § 13.73 Formal regulatory and/or statutory requirements; § 13.205 Scientific or other relevant facts. Subpart—Collecting, Assembling, Furnishing, or Utilizing Consumer Reports: § 13.382 Collecting, assembling, furnishing, or utilizing consumer reports; 13.382–1 Confidentiality, accuracy, relevancy, and proper utilization; 13.382–1(a) Fair Credit Reporting Act; 13.382–5 Formal regulatory and/or statutory requirements; 13.382–5(a) Fair Credit Reporting Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–37 Formal regulatory and/or statutory requirements; 13.533–45 Maintain records. Subpart—Failing to Comply with Affirmative Statutory Requirements: § 13.1048 Failing to comply with affirmative statutory requirements; 13.1048–10 Fair Credit Reporting Act. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections; § 13.1395 Connections and arrangements with others; § 13.1417 Financing activities.

List of Subjects in 16 CFR Part 13

Credit improvement services, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

Emily H. Rock,

Secretary.

[FR Doc. 86–13600 Filed 6–16–86; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Dkt. C–3188]

James F. Herndon, Jr.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a former official of Credit Establishing Bureau, a Detroit-based credit repair clinic that went out of business in February, 1984, from falsely representing in the future that he can improve credit records and arrange for consumers to receive major credit cards.

DATE: Complaint and Order issued May 27, 1986.[1]

FOR FURTHER INFORMATION CONTACT: FTC/I–500, Kathleen V. Buffon, Washington, D.C. 20580. (202) 724–1186.

SUPPLEMENTARY INFORMATION: On Thursday, Jan. 9, 1986, there was published in the **Federal Register**, 51 FR 967, a proposed consent agreement with analysis In the Matter of James F. Herndon, Jr., individually and as a former partner trading and doing business as Credit Establishing Bureau, formerly a partnership, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly § 13.10 Advertising falsely or misleadingly; § 13.15 Business status, advantages, or connections; § 13.15–30 Connections or arrangements with others; § 13.70 Fictitious or misleading guarantee; § 13.73 Formal regulatory and/or statutory requirements; § 13.205 Scientific or other relevent facts. Subpart—Collecting, Assembling, Furnishing, or Utilizing Consumer Reports: § 13.382 Collecting, assembling, furnishing, or utilizing consumer reports; 13.382–1 Confidentiality, accuracy, relevancy, and proper utilization; 13.382–1(a) Fair Credit Reporting Act; 13.382–5 Formal regulatory and/or statutory requirements; 13.382–5(a) Fair Credit Reporting Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–37 Formal regulatory and/or statutory requirements; 13.533–45 Maintain records. Subpart—Failing to Comply with Affirmative Statutory Requirements: § 13.1048 Failing to comply with affirmative statutory requirements; 13.1048–10 Fair Credit Reporting Act. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1395 Connections and arrangements with others; § 13.1417 Financing activities.

List of Subjects in 16 CFR Part 13

Credit improvement services, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended, 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86–13601 Filed 6–16–86; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Dkt. C–3189]

Steven M. Hull; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a former official of Credit Establishing Bureau, a Detroit-based credit repair clinic that went out of business in February, 1984, from falsely representing in the future that he can improve credit records and arrange for consumers to receive major credit cards. Additionally,

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th St. and Pa. Ave., NW., Washington, DC 20580.

respondent, as a company founder, is required to provide consumer redress in the form of a six-week consumer education program directed at people with credit problems similar to those of the company's clients.

DATE: Complaint and Order issued May 27, 1986.[1]

FOR FURTHER INFORMATION CONTACT: FTC/I–500, Kathleen V. Buffon, Washington, D.C. 20580. (202) 724–1186.

SUPPLEMENTARY INFORMATION: On Thursday, Jan. 9, 1986 there was published in the **Federal Register**, 51 FR 967, a proposed consent agreement with analysis In the Matter of Steven M. Hull, individually and as a former partner trading and doing business as Credit Establishing Bureau, formerly a partnership, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.15 Business status, advantages, or connections; 13.15–30 Connections or arrangements with others; § 13.70 Fictitious or misleading guarantee; § 13.73 Formal regulatory and/or statutory requirements; § 13.205 Scientific or other relevant facts. Subpart—Collecting, Assembling, Furnishing, or Utilizing Consumer Reports: § 13.382 Collecting, assembling, furnishing, or utilizing consumer reports; 13.382–1 Confidentiality, accuracy, relevancy, and proper utilization; 13.382–1(a) Fair Credit Reporting Act; 13.382–5 Formal regulatory and/or statutory requirements; 13.382–5(a) Fair Credit Reporting Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–37 Formal regulatory and/or statutory requirements; 13.533–45 Maintain records. Subpart—Failing to Comply with Affirmative Statutory Requirements: § 13.1048 Failing to comply with affirmative statutory requirements; 13.1048–10 Fair Credit Reporting Act. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1395 Connections and arrangements with others; § 13.1417 Financing activities.

List of Subjects in 16 CFR Part 13

Credit improvement services, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86–13602 Filed 6–16–86; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th St. and Pa. Ave., NW., Washington, DC 20580.

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16 CFR Part 13

[Dkt. C–3190]

George Tannous; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a former official of Credit Establishing Bureau, a Detroit-based credit repair clinic that went out of business in February, 1984, from falsely representing in the future that he can improve credit records and arrange for consumers to receive major credit cards. Additionally, respondent, as a company founder, is required to provide consumer redress in the form of a six-week consumer education program directed at people with credit problems similar to those of the company's clients.

DATE: Complaint and Order issued May 27, 1986.[1].

FOR FURTHER INFORMATION CONTACT: FTC/I–500, Kathleen V. Buffon, Washington, D.C. 20580 (202) 724–1186.

SUPPLEMENTARY INFORMATION: On Thursday, Jan. 9, 1986, there was published in the **Federal Register**, 51 FR 967, a proposed consent agreement with analysis In the Matter of George Tannous, individually and as a former partner trading and doing business as Credit Establishing Bureau, formerly a partnership, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestion or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.15 Business status, advantages, or connections; 13.15–30 Connections or arrangements with others; § 13.70 Fictitious or misleading guarantee; § 13.73 Formal regulatory and/or statutory requirements; § 13.205 Scientific or other relevant facts. Subpart—Collecting, Assembling, Furnishing, or Utilizing Consumer Reports: § 13.382 Collecting, assembling, furnishing, or utilizing consumer reports; 13.382–1 Confidentiality, accuracy, relevancy, and proper utilization; 13.382–1(a) Fair Credit Reporting Act; 13.382–5 Formal regulatory and/or statutory requirements; 13.382–5(a) Fair Credit Reporting Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–37 Formal regulatory and/or statutory requirements; 13.533–45 Maintain records. Subpart—Failing to Comply with Affirmative Statutory Requirements: § 13.1048 Failing to comply with affirmative statutory requirements; 13.1048–10 Fair Credit Reporting Act. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1395 Connections and arrangements with others; § 13.1417 Financing activities.

List of Subjects in 16 CFR Part 13

Credit improvement services, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86–13603 Filed 6–16–86; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th St. and Pa. Ave., NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

21 CFR Part 73

[Docket No. 84C-0192]

Listing of Color Additives for Coloring Contact Lenses; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of May 6, 1986, for the regulation that provides for the safe use of 4-[(2,4-dimethylphenyl)azo]-2,4-dihydro-5-methyl-2-phenyl-3*H*-pyrazol-3-one for coloring contact lenses. This action responds to a petition filed by Dow Corning Ophthalmics, Inc.

DATE: Effective date confirmed: May 6, 1986.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of April 3, 1986 (51 FR 11430), FDA amended the color additive regulations to provide for the safe use of 4-[(2,4-dimethylphenyl)azo]-2,4-dihydro-5-methyl-2-phenyl-3*H*-pyrazol-3-one for coloring contact lenses.

In the final rule, FDA gave interested persons until May 5, 1986, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of April 3, 1986, for 4-[(2,4-dimethylphenyl)azo]-2,4-dihydro-5-methyl-2-phenyl-3*H*-pyrazol-3-one should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drug (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the April 3, 1986, final rule. Accordingly, the amendments adding § 73.3122 thereby became effective May 6, 1986.

Dated: June 10, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 13575 Filed 6-16-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 73

[Docket No. 85C-0378]

Phthalocyanine Green; Listing as a Color Additive for Coloring Contact Lenses; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of May 6, 1986, for the regulation that provides for the safe use of phthalocyanine green for coloring contact lenses. This action responds to a petition filed by Optacryl, Inc.

DATE: Effective date confirmed: May 6, 1986.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of April 3, 1986 (51 FR 11432), FDA amended the color additive regulations to provide for the safe use of phthalocyanine green (Colour Index Pigment Green 7, C.I. No 74260, CAS Reg. No. 1328-53-6) for coloring contact lenses.

In the final rule, FDA gave interested persons until May 5, 1986, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of April 3, 1986, for phthalocyanine green should be confirmed.

In the final rule, the agency stated that the regulation would be effective on May 5, 1986. That statement was in error, however. The regulation could not become effective before May 6, 1986. FDA corrected this error in the **Federal Register** of April 14, 1986 (51 FR 12607).

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the April 3, 1986, final rule. Accordingly, the amendments promulgated thereby became effective May 6, 1986.

Dated: June 11, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 13574 Filed 6-16-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Extension of Temporary Control of 3,4-Methylenedioxymethamphetamine (MDMA) in Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to extend the temporary control of 3,4-methylenedioxymethamphetamine (MDMA) in Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.). The temporary scheduling of MDMA is to expire on July 1, 1986. This notice will extend the temporary scheduling of MDMA for six months or until the proceedings initiated pursuant to 21 U.S.C. 811(a) are concluded, whichever comes first.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, 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.

On July 27, 1984, in a **Federal Register** notice (49 FR 30210-1), the Administrator of the Drug Enforcement

Administration (DEA) proposed to place 3,4-methylenedioxymethamphetamine, commonly known as MDMA, into Schedule I of the Controlled Substances Act (CSA) pursuant to the scheduling provisions of 21 U.S.C. 811(a). Several interested individuals raised objections to the scheduling of MDMA and requested a hearing in this matter. Therefore, on December 31, 1984, in a **Federal Register** notice (49 FR 50732–3), the DEA Administrator announced that a hearing would be convened before Administrative Law Judge Francis L. Young regarding the scheduling of MDMA. The outcome of the proceedings initiated pursuant to 21 U.S.C. 811(a) with regard to MDMA is still pending.

Notwithstanding the above proceedings, the Administrator found, based on the evidence before him, that placement of MDMA into Schedule I on a temporary basis was necessary to avoid an imminent hazard to the public safety. The clandestine production, distribution and abuse of MDMA was escalating, injuries were reported and new information concerning MDMA's potential neurotoxicity was discovered. Based on this information, on May 31, 1985, the DEA Administrator issued a final rule in the **Federal Register** (50 FR 23118–20) amending 21 CFR 1308.11(g) to temporarily place MDMA into Schedule I of the Controlled Substances Act pursuant to the emergency scheduling provisions of 21 U.S.C. 811(h). This action became effective on July 1, 1985. This emergency scheduling action in no way interfered with the hearing in progress regarding the permanent scheduling of MDMA.

Section 201(h) of the CSA (21 U.S.C. 811(h)(2)) provides that the emergency scheduling of a substance expires at the end of one year from the effective date of the order. However, if a rulemaking proceeding to schedule the substance has been initiated pursuant to section 201(a)(1) of the CSA (21 U.S.C. 811(a)(1)), the temporary scheduling may be extended for up to six months. A rulemaking proceeding to schedule MDMA has been initiated pursuant to 21 U.S.C. 811(a) and is currently in progress. Thus, the temporary scheduling of MDMA, which is due to expire on July 1, 1986, will be extended until January 1, 1987, or until the date on which a final rule, published as a result of the formal rulemaking proceeding, is effective, whichever comes first.

Pursuant to 21 U.S.C. 811(h)(2) and since proceedings have been initiated, and not yet concluded, in accordance with 21 U.S.C. 811(a)(1) to schedule MDMA, the Administrator hereby orders that the temporary scheduling of MDMA be extended to January 1, 1987 or until the conclusion of the rulemaking proceeding, whichever occurs first.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the extended scheduling of MDMA in Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). The substance, MDMA, has no recognized or licensed manufacturer in the United States.

It has been determined that the extension of the temporary placement of MDMA in Schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

John C. Lawn,

Administrator, Drug Enforcement Administration.

Dated: June 12, 1986.

[FR Doc. 86–13652 Filed 6–16–86; 8:45 am]

BILLING CODE 4410–09–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83–465; RM–4258, RM–4316, RM–4546]

Radio Broadcasting Services; Browerville and Breezy Point, MN et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 259A to Browerville, MN, Channel 227 to Nisswa, MN, substitutes Channel 282C2 for Channel 237A at Breezy Point, MN, and modifies the permit of Station KLKS to specify Channel 282C2, and reallocates Channel 261A from Nisswa, MN, to Pequot Lakes, MN, to reflect actual usage, in response to petitions filed by Midwest Radio Company, Elden Stielstra and Lakes Broadcasting Company. With this action, this proceeding is terminated.

DATES: Effective July 16, 1986. The window period for filing applications at Nisswa and Browerville will open on July 17, 1986, and close on August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 83–465, adopted May 22, 1986, and released June 9, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read:

Authority: 47 U.S.C. 154, 303.

2. Section 73.202(b) is amended under Minnesota by adding Browerville, Channel 259A and revising the other entrees to read as follows:

§ 73.202 Table of Allotments

* * * * *

(b) * * *

Minnesota	Channel No.
* * * * *	
Breezy Point	282C2
Browerville	259A
* * * * *	
Nisswa	227
* * * * *	
Pequot Lakes	261A
* * * * *	

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–13521 Filed 6–16–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket 74–14; Notice 44]

Federal Motor Vehicle Safety Standards; Occupant Protection; Improvement of Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In November 1985, NHTSA published a final rule setting comfort and convenience performance requirements for both manual and automatic safety belt assemblies installed in motor vehicles with a gross

vehicle weight rating of 10,000 pounds or less. This notice responds to two petitions for reconsideration and corrects certain technical and typographical errors in that final rule.

DATES: The amendments made by this notice to the text of Standard No. 208 will take effect on June 17, 1986. Manufacturers do not have to comply with the comfort and convenience requirements of S7.4 until September 1, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–426–2264).

SUPPLEMENTARY INFORMATION: The agency published a final rule on November 6, 1985 (50 FR 46056), which modified the comfort and convenience performance requirements in Standard No. 208, *Occupant Crash Protection.* Petitions for reconsideration of that final rule were received from Ford Motor Company (Ford) and General Motors Corporation (GM).

Webbing Tension-Relieving Devices

Both Ford and GM requested modification of the requirement in S7.4.2 of the final rule that any belt slack that can be introduced into an automatic safety belt system by means of any tension-relieving device or design "shall be cancelled each time the safety belt is unbuckled or the adjacent vehicle door is opened except for belt systems in open-body vehicles with no doors." Both petitioners said that the language in the rule could be interpreted as requiring belt slack to be cancelled each time a safety belt is unbuckled, whether or not the adjacent door is open. The petitioners also stated that the language in the amendment did not reflect the agency's intent as expressed in the preamble to the final rule. They urged the agency to amend the requirement so that belt slack in an automatic belt system must be cancelled only when the adjacent vehicle door is opened.

The agency's intent, as expressed in the preamble (50 FR 46059), was that belt slack in automatic belt systems must be cancelled each time that the adjacent vehicle door is opened, whether or not the belt is buckled. Anticipating the adoption of a dynamic test requirement for manual belts, the language of the final rule was also intended to give manufacturers increased design flexibility by providing them the option of linking cancellation of tension-relievers in dynamically-tested manual belt systems to, at their choice, either opening of the door or releasing of the belt. Therefore NHTSA is amending the requirement to clarify that for automatic belts, concellation of the tension-reliever is linked to opening the adjacent vehicle door and for dynamically-tested manual safety belts, a manufacturer has the option of using either opening the door or releasing the belt as the event leading to cancellation of the tension reliever.

Torso Belt Body Contact Force

In the final rule, the agency exempted certain automatic and manual safety belt systems incorporating tension-relieving devices, such as window-shade devices, from the 0.7–pound torso belt contact force requirement. The reason for this exemption was the agency's concern that compliance with the body contact force requirement could limit manufacturers' design flexibility in meeting the retraction and other requirements in the rule. In their comments on the notice of proposed rulemaking, both foreign an domestic manufacturers had questioned whether imposing a contact force requirement on belt systems with tension relievers would advance safety. They said that the necessity for complying with the belt contact force requirement could result in the production of some belt systems in which there was insufficient force to retract webbing reliably.

Ford and GM objected to the language in the final rule, because the exemption was limited to safety belt systems "which incorporate a webbing tension-relieving device that complies with S7.4.2." Section 7.4.2 requires automatic belt systems with webbing tension-relieving devices to meet the injury criteria of the standard when the belt is adjusted to have the maximum amount of slack recommended by the vehicle manufacturer. The petitioners stated that they do not believe the reference to S7.4.2 was intended to discourage the use of tension relief devices on manual seat belt systems or to imply that manual seat belt systems incorporating tension-relief devices should not be eligible for the exemption now accorded automatic seat belt systems.

In the preamble to the final rule (50 FR 46060), the agency noted that the tension-relieving requirements for manual safety belts were proposed in Notice 38 of this docket, in conjunction with the dynamic tests for manual safety belts. The agency also said that if a dynamic test requirement for manual belts was adopted, the provisions on tension-relievers for manual belts would be expected to be identical to those for automatic belts. On March 21, 1986 (51 FR 9800), the agency published a final rule setting dynamic test requirements for manual safety belts in passenger cars. The March 1986 rule adopted the same requirements of tension-relieving devices in dynamically-tested manual safety belts that were adopted in the November 1985 final rule for automatic belts. (In the March 1986 rule, the agency deferred action on whether to adopt the proposed dynamic testing for manual safety belts in light trucks and vans. If such a requirement is adopted, NHTSA will apply the same requirement on tension relievers to those manual belts that are applied to other dynamically-tested manual safety belts.)

In the November 1985 final rule, the agency did not intend to preclude the use of tension-relieving devices on non-dynamically tested manual safety belts or to imply that manual belt systems incorporating tension-relieving devices should not be eligible for the exemption from the belt contact force requirement now accorded automatic safety belt systems and dynamically-tested manual safety belts. The agency has revised the language of S7.4.3 to exempt all belts, whether manual or automatic, incorporating tension relievers from the belt contact force requirement. The agency encourages manufacturers to provide information in their owner's manual on properly adjusting non-dynamically tested manual safety belts with tension relievers.

Belt Retraction

In the final rule, the retraction requirement for manual safety belts stated that torso and lap belt webbing must automatically retract to a stowed position, when the adjacent vehicle door is in the open position, or when the seat belt latchplate is released. Both Ford and GM interpreted this requirement to mean that retraction must occur when the latchplate is released whether or not the adjacent door is opened. They requested that the wording be revised to require retraction only when both conditions exist, i.e., release of the latchplate and opening of the adjacent door. They stated that the belt cannot retract until it is unbuckled and that they see no safety need to require retraction before the adjacent door is opened.

As stated in the April 1985 notice of proposed rulemaking, many persons find seat belts inconvenient because the belt webbing will not retract completely to its stowed position when the system is unbuckled, thus creating an obstacle when the occupant is trying to exit the vehicle or soiling the belt if it is caught in the door. The intent of the retraction requirement in the final rule was to provide manufacturers increased

flexibility by giving them the option of triggering tension-relief cancellation and belt retraction by either release of the latchplate or opening of the adjacent vehicle door. As noted by the American Safety Belt Council in its comments on the April 1985 NPRM, new safety belt designs are available which will cancel a tension-relieving device and retract the belt when the latchplate is released from the buckle, regardless of whether the door is open or not. The agency did not intend that each condition trigger the retraction mechanism, but instead intended to allow manufacturers the option of using either condition to initiate belt retraction. For these reasons, the agency is amending the requirement to make it clear that manufacturers have the option of determining whether door opening or latchplate release is the mechanism that triggers retraction of a manual safety belt.

The rule will continue to provide that in an open-body vehicle with no doors, a manufacturer has the option to provide either automatic or manual deactivation of a tension-relieving device. Thus, in the retraction test in those vehicles, the agency will deactivate the tension-relieving devices in the manner provided by the manufacturer.

Armrests

The petitioners also requested a further clarification of the language of the final rule on belt retraction. That requirement permits an outboard armrest of a seat to be placed in its stowed position for the purpose of the retraction test, if the armrest must be stowed to allow the seat occupant to exit the vehicle. The agency stated in the preamble to the final rule that it intended to allow the stowage of folding armrests during the retraction test if "they protrude into the door opening in a manner which encumbers egress." (50 FR 46061).

Ford noted that the common dictionary meaning of "encumber" is "impede," or "hinder," so that egress would be made difficult although not necessarily impossible. Ford said that the language of the final rule limited the stowage of armrests to situations in which armrests, unless stowed, make egress impossible.

To eliminate the possibility of having to make subjective judgments as to whether an armrest "hinders" occupant egress, the agency is modifying the retraction requirement to provide that any folding armrest must be stowed prior to initiation of the retraction test.

Technical Corrections

Ford pointed out a typographical error in amendment 14 of the final rule, which referred to S7.1.13, instead of referring to S7.1.3. The agency has made the necessary correction. Ford also stated that decimal points should be added, where appropriate, to the specified dimensional tolerances in the table of weights and dimensions of vehicle occupants. These corrections would conform the dimensions set forth in the chart, which is in amendment 14 in the final rule, to the corresponding dimensions specified on drawing SA 150 M002 or the test dummy. The agency agrees and has made the necessary corrections.

The comfort and convenience requirements in S7.4 of Standard No. 208 apply to automatic and manual safety belt assemblies installed in any vehicle with a GVWR of 10,000 pounds or less. The title of S7 in this standard, *Seat belt assembly requirements—passenger cars*, is no longer accurate, because the paragraphs of S7., by their terms, apply to passenger cars and several other types of vehicles. Therefore, the title is corrected in this notice to read S7. *Seat belt assembly requirements*. The agency is also amending the retraction requirements of S7.4.5 to make clear that, as proposed in the April 1985 NPRM, the retraction test only applies to the front outboard designated seating positions.

The remaining amendments are made to remove an extra "and" in paragraph S7.4.6.1(a), and to correct a typographical error in S4.5.3.3(b) (change "set" to "seat").

Cost and Benefits

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. A final regulatory evaluation was prepared on the changes made in Notice 42 and discussed in that notice. This evaluation also discusses and estimates the costs and benefits of these amendments. Since many vehicles currently comply with most of these requirements, the incremental costs are not anticipated to be significant. Copies of the evaluation can be obtained by writing to NHTSA's Docket Section at the address given at the beginning of this notice.

Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Few, if any, motor vehicle manufacturers would qualify as small entities. The final rule will not significantly affect the manufacturing process of any safety belt manufacturers who are small entities or the retail price of vehicles purchased by any small organizations or governmental units. Accordingly, the agency has not prepared a regulatory flexibility analysis.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality to the human environment.

Effective Date

This notice makes minor clarifications and typographical and technical corrections to the text of Standard No. 208. NHTSA has determined that it is in the public interest to have these amendments to the language of the standard go into effect on publication of this notice in the **Federal Register**, since these amendments will provide manufacturers with more flexibility in developing designs to comply with the safety belt comfort and convenience requirements, which will go into effect on September 1, 1986.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR 571.208 is amended as follows:

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

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

§ 571.208 [Amended]

2. The title of S7. is revised to read: S7. *Seat belt assembly requirements.*

3. S7.4.2 is revised to read: S7.4.2 *Webbing tension-relieving device.* Each vehicle with an automatic seat belt assembly, or with a Type 2 manual seat belt assembly that must meet S4.6, installed in a front outboard designated seating position that has either manual or automatic tension-relieving devices permitting the introduction of slack in the webbing of the shoulder belt (e.g., "comfort clips" or "window-shade" devices) shall:

(a) Comply with the requirements of S5.1 with the shoulder belt webbing

adjusted to introduce the maximum amount of slack recommended by the vehicle manufacturer pursuant to S7.4.2(b).

(b) Have a section in the vehicle owner's manual that explains how the tension-relieving device works and specifies the maximum amount of slack (in inches) recommended by the vehicle manufacturer to be introduced into the shoulder belt under normal use conditions. The explanation shall also warn that introducing slack beyond the amount specified by the manufacturer could significantly reduce the effectiveness of the shoulder belt in a crash; and

(c) Have, except for open-body vehicles with no doors, an automatic means to cancel any shoulder belt slack introduced into the belt system by a tension-relieving device. In the case of an automatic safety belt system, cancellation of the tension relieving device shall occur each time the adjacent vehicle door is opened. In the case of a manual seat belt required to meet S4.6, cancellation of the tension-relieving device shall occur, at the manufacturer's option, either each time the adjacent door is opened or each time the latchplate is released from the buckel. In the case of open-body vehicles with no doors, cancellation of the tension-relieving device may be done by a manual means.

4. S7.4.3 is revised to read as follows:

S7.4.3 *Belt contact force.* Except for manual or automatic seat belt assemblies which incorporate a webbing tension-relieving device, the upper torso webbing of any seat belt assembly, when tested in accordance with S10.6, shall not exert more than 0.7 pounds of contact force when measured normal to and one inch from the chest of an anthropomorphic test dummy positioned in accordance with S10 in the seating position for which that assembly is provided, at the point where the centerline of the torso belt crosses the midsagittal line on the dummy's chest.

5. S7.4.5 is revised to read as follows:

S7.4.5 *Retraction.* When tested under the conditions of S8.1.2 and S8.1.3, with anthropomorphic test dummies whose arms have been removed and which are positioned in accordance with S10 in the front outboard designated seating positions and restrained by the belt systems for those positions, the torso and lap belt webbing of any of those seat belt systems shall automatically retract to a stowed position either when the adjacent vehicle door is in the open position and the seat belt latchplate is released, or, at the option of the manufacturer, when the latchplate is released. That stowed position shall prevent any part of the webbing or hardware from being pinched when the adjacent vehicle door is closed. A belt system with a tension-relieving device in an open-bodied vehicle with no doors shall fully retract when the tension-relieving device is deactivated. For the purpose of the retraction requirement, outboard armrests, which are capable of being stowed, on vehicle seats shall be placed in their stowed positions.

6. S7.4.6.1(a) is amended by removing the second occurrence of the word "and" in the first sentence.

7. S4.5.3.3(b) is amended by changing the word "set" to read "seat" and the word "show" to read "shown."

8. Condition (B) of S4.5.3.3(b) is amended by removing the second occurrence of the word "the" and by changing the word "releases" to read "release."

9. The weights and dimensions of the vehicle occupants referred to in this standard and specified in S7.1.3 are revised to read as follows:

	50th-percentile 6-year-old child	5th-percentile adult female	50th-percentile adult male	95th-percentile adult male
Weight	47.3 pounds	102 pounds	164 pounds ±3	215 pounds.
Erect sitting height	25.4 inches	30.9 inches	35.7 inches±.1	38 inches.
Hip breadth (sitting)	8.4 inches	12.8 inches	14.7 inches±.7	16.5 inches.
Hip circumference (sitting)	23.9 inches	36.4 inches	42 inches	47.2 inches.
Waist circumference (sitting)	20.8 inches	23.6 inches	32 inches±.6	42.5 inches.
Chest depth		7.5 inches	9.3 inches±.2	10.5 inches.
Chest circumference:				
(nipple)		30.5 inches		
(upper)		29.8 inches	37.4 inches±.6	44.5 inches.
(lower)		26.6 inches		

Issued on: June 11, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86-13673 Filed 6-13-86; 9:41 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 51, No. 116
Tuesday, June 17, 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

Federal Aviation Administration

14 CFR Part 1

[Docket No. 24912; Petition Notice PR 86-9]

Petition of General Aviation Manufacturers Association; To Establish Definitions for Intentional One-Engine-Inoperative Speed and Air-Minimum Control Speed, and Establish a Procedure for Demonstration of Air-Minimum Control Speed

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Petition for rulemaking.

SUMMARY: This notice publishes for public comment the petition of the General Aviation Manufacturers Association dated January 22, 1986. The petitioner proposes that the Federal Aviation Administration amend Part 1 of the Federal Aviation Regulations (FAR) to establish definitions for an intentional one-engine-inoperative speed, V_{SEE}, and air-minimum control speed, V_{MCA}. In addition, the petitioner petitions the FAA to establish a standard for the demonstration of directional control when one engine suddenly becomes inoperative by amending the rules, handbooks, and advisory circulars. The petitioner contends that such action will be consistent with industry practice and National Transportation Safety Board (NTSB) Safety Recommendations A76-97 and A76-98, dated 29 July 1976.

The purpose of this notice is to improve the public's awareness of this aspect of the FAA's regulatory activities. Publication of this notice is not intended to affect the legal status of the petition or its final disposition.

DATE: Comments must be received on or before July 17, 1986.

ADDRESSES: Send comments on this petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24912, 800 Independence Avenue SW., Washington, DC 20591. Comments may be inspected in Room 915-G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Robert Ball, Regulations and Policy Office, ACE-110, Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to submit such written data, views, or arguments on the petition as they may desire. Communications should identify the docket and petition notice number and be submitted in triplicate to the address indicated above. All communications received on or before the closing date for comments will be considered before taking action on the petition. All comments received will be available for examination in the FAA docket. Persons wishing the FAA to acknowledge receipt of their comments in response to this notice should submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24912." The postcard will be date stamped and returned to the commenter.

Normally, the FAA only summarizes petitions for rulemaking for publication in the **Federal Register.** In the case of this petition by the General Aviation Manufacturers Association (GAMA), however, the FAA has elected to publish the petition verbatim. This action precludes any loss of thought or meaning which might occur in a summarization of the petition. The FAA further wishes commenters to address the following questions in addition to providing comments on material and discussions provided by GAMA. A discussion of the merits of the issues raised by the questions is desired rather than a simple yes or no response. This discussion will assist the FAA in evaluating the merits of the petition.

1. Should the intentional one engine inoperative speed, V_{SSE}, be established during type certification?

2. Should the V_{SSE}, speed be in the Limitations Section of the Airplane Flight Manual?

3. Should the FAA amend Parts 1, 23, and 25 to change current designated V_{mc} to V_{mca}?

4. Should the procedure for attaining the air-minimum-control speed, V_{MCA}, from the intentional one-engine-inoperative speed, V_{SSE}, be evaluated for each airplane during type certification and the procedure specified in the Airplane Flight Manual?

Although this notice sets forth the contents of the petition as received by the FAA without changes, it should be understood that its publication to receive public comment is in accordance with FAA procedures governing petitions for rulemaking, it does not propose a regulatory rule for adoption, represent an FAA position, or otherwise commit the FAA on the merits of the petition. The FAA intends to proceed to consider the petition under the applicable procedures of Part 11 and reach a conclusion on the merits of the proposals after it has had an opportunity to evaluate the petition carefully in light of the comments received and other relevant matters presented. If the FAA concludes that it should initiate public rulemaking action, including evaluation of the proposals, it will be published in the **Federal Register** as a notice of proposed rulemaking.

The Petition

Accordingly, the Federal Aviation Administration publishes verbatim for public comment the following petition for rulemaking of the General Aviation Manufacturers Association dated January 22, 1986.

Issued in Washington, DC, on June 11, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

BILLING CODE 4910-13-M

General Aviation Manufacturers Association

Suite 801
1400 K Street NW
Washington, DC 20005
(202) 393-1500

January 22, 1986

The Honorable Donald D. Engen
Administrator
Federal Aviation Administration
Room 1010
800 Independence Avenue, S.W.
Washington, D.C. 20591

SUBJECT: Procedure for Demonstration of Minimum Control Speed (V_{mca})

In accordance with FAR 11.25, the General Aviation Manufacturers Association (GAMA) respectfully petitions the FAA to establish a standard for the demonstration of directional control when one engine suddenly becomes inoperative by amending its rules, handbooks and advisory circulars. Such action will be consistent with industry practice and Safety Recommendations A76-97 and 98, dated 29 July, 1976, of the National Transportation Safety Board.

At the present time, though no FAA regulation specifically requires that a person requesting a multi-engine rating demonstrate that directional control can be maintained at the airplane's minimum control speed, it is almost always part of any check out for an airplane multi-engine rating. FAA Advisory Circular 61-21A covers V_{mc} demonstrations in depth, stressing that no attempt should be made to duplicate the V_{mc} determined for certification. Advisory Circular 61-9B and the Private Pilot Practical Test Standard (FAA S-8081-1) all note the adverse

effects of density altitude on stall speed and caution the instruction examiner and the student to ensure that a V_{mc} demonstration will not be performed at a speed below the airplane's stall speed. Unfortunately, a few accidents each year attest to the fact that FAA's advice is not heeded.

One alternative, not requiring demonstration of directional control at V_{mc} for a multi-engine rating, is obviously not appropriate if the possibility of an engine failure in a multi-engine airplane exists (which it does, though very infrequently). What is needed is a recommended (or required) safe way to teach and demonstrate the ability to control a multi-engine airplane when one engine is suddenly made, or becomes, inoperative. That is the substance of the NTSB safety recommendations and that is what GAMA has been informally doing for the past few years. The objective is to provide the multi-engine pilot with the skills needed to address an actual emergency, such as the loss of an engine on takeoff.

To accomplish this objective, GAMA has established (and incorporated into its Specification for Pilot's Operating Handbooks) the following definition, which we request be incorporated into FAR 1.

"V_{sse} Intentional One Engine Inoperative Speed is the minimum speed, selected by the manufacturer, for intentionally rendering one engine inoperative, inflight, for pilot training.

Note: V_{sse} is predicated upon the maintenance of conservative controllability margins when one engine is suddenly, intentionally rendered inoperative. Its selection is based upon the characteristics of the specific airplane to which it applies. However, in no case may it be lower than 1.05 V_{mca}."

In addition, GAMA requests that the definition V_{mc}, Minimum Control Speed, in FAR 1, be redesignated as V_{mca}, Air Minimum Control Speed, as is the common practice within industry and most FAA Aircraft Certification Offices. GAMA made such a request for the redesignation of V_{mc} at the October 1984 FAR 23 Airworthiness Review, recognizing that this Review was limited to Part 23 airplanes.

Further, GAMA requests that a general procedure for practice demonstration of V_{mca} be incorporated in FAA's Practical Test Standards and Advisory Circulars, if appropriate. This general procedure should incorporate the following concepts and recommendations.

Procedures for Practice Demonstration of V_{mca}

For multi-engine airplanes, procedures for practice demonstrations of V_{mca} should be based on the use of V_{sse}, Intentional One Engine Inoperative Speed.

The procedures should specify that intentionally rendering one engine inoperative for the purpose of demonstrating, or training in, the recognition of V_{mca} will be done by starting at a safe altitude for practice, at or above V_{sse}, then gradually reducing the speed (at approximately one knot per second) until either V_{mca} or stall warning, whichever occurs first, is obtained.

Some types of airplanes (e.g., turbopropeller powered) may have V_{mca} determined with automatic propeller pitch control devices that may have substantially more drag from an engine operating at reduced power, to simulate an engine failure, than with an inoperative engine. In such cases (where V_{sse} is established at a speed to accommodate simulated engine failure by power reduction) the procedures should include an explanation of the difference between simulated and actual power loss.

GAMA also requests that FAA issue an advisory circular containing V_{sse} speeds for airplanes that did not have such speeds established by the type certificate holder when the type certificate was granted. Such information would be useful to flight instructors and examiners in the performance of their functions. GAMA members have agreed to provide such information to FAA. All airplanes for which Pilot's Operating Handbooks have been approved have a published V_{sse} speed.

Though the number of accidents caused by an intentional engine cut during training on a multi-engine airplane is small, it is possible, through adoption of these recommendations, to make it smaller or, hopefully, to eliminate these accidents altogether.

Your consideration of this request is appreciated.

Sincerely,

Stanley J. Green
Vice President

[FR Doc. 86-13554 Filed 6-16-86; 8:45 am]
BILLING CODE 4910-13-C

14 CFR Part 39

[Docket No. 85-NM-133-AD]

Airworthiness Directives; British Aerospace Model BAe 125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require an inspection of the forward engine mountings and repairs, if necessary, of all BAe Model 125 Series DH/BH/HS airplanes fitted with Garrett TFE 731-3R-1H engines. This action is prompted by several reports of damage caused by interference between the forward engine mounts and the top center cowling. Failure to repair the forward engine mountings could result in failure of the engines mounts.

DATES: Comments must be received on or before August 8, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 85-NM-133-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 85-NM-133-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain BAe Model 125 series airplanes, fitted with Garrett TFE 731-3A-1H engines. There have been reports of damage to the forward engine mounts due to interference with the top center cowling. This condition, if uncorrected, could lead to failure of the forward engine mounts. British Aerospace has issued BAe Service Bulletin 71-38, Revision 1, dated October 4, 1985, which describes inspection and repair procedures which will prevent this condition from occurring. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require compliance with the previously mentioned service bulletin.

It is estimated that 217 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $43,400.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($200). A final evaluation has been prepared for this regulation and placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to BAe Models DH/HS/BS 125 series airplanes equipped with Garrett TFE-731-3R-1H, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To prevent failure of the forward engine mounts, accomplish the following, unless previously accomplished:

1. Inspect the forward engine mounts and repair, if necessary, in accordance with BAe Service Bulletin 71-38, Revision 1, dated October 4, 1985.

2. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

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

All persons affected by this proposed directive, who have not already received the appropriate service document from the manufacturer, may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900

Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 10, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-13558 Filed 6-16-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-112-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the forward control quadrant spoiler position sensor rotary variable differential transducer (RVDT), on certain Boeing Model 767 airplanes. This action is necessary because the potential exists for a hardover command to occur, if an RVDT separates from the quadrant shaft, which would result in the full deployment of three spoiler panels. The ensuing motion will cause a sudden large rolling movement; and, after recovery by the pilot, diminished roll capability and a significant loss of lift will exist.

DATE: Comments must be received on or before August 8, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-112-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service bulletin may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Frank vanLeynseele, Systems and Equipment Branch, ANM-130S; telephone (206) 431-2948. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of the NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-112-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

During an inspection of Model 767 airplanes, it was discovered that some lateral control quadrant assemblies were mislocated by more than .13 inch. The mislocation of the quadrant assembly results in an incompleted engagement of the quadrant shaft into the RVDT assembly. The RVDT is a transducer which changes the shaft position information into an electrical signal. The RVDT electrical signal output commands the spoiler panel deployment.

A quadrant mislocation by more than .13 inch means that one of the two spoiler shaft input load paths may be disengaged from the female spline shaft. This defect, together with a shaft failure, could result in an uncommanded RVDT signal to deploy 3 of the 6 spoiler panels on one wing. This failure is not annunciated to the pilot. The ensuing motion will cause a sudden large rolling moment, subsequent diminished roll capability, and a significant loss of lift.

Boeing issued Alert Service Bulletin 767-27A0062, dated January 24, 1986, which describes a dimensional check of the spoiler RVDT engagement; installation of a shim, if necessary, to restore the proper dimension; and installation of a spline insert in the quadrant shaft to ensure RVDT engagement by a longer, more effective mating spline.

Since this condition may exist on other airplanes of the same type design, an airworthiness directive is proposed which would require accomplishment of the procedures described in the service bulletin, previously mentioned.

It is estimated that 59 airplanes of U.S. registry would be affected by this AD, that it would take 16 manhours per aircraft to accomplish the required rework, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators would be $37,760.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 767 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 767 airplanes identified in Boeing Alert Service Bulletin 767-27A0062, dated January 24, 1986, certificated in any category. To prevent the uncommanded deployment of spoiler panels in flight as a result of a rotary variable differential transducer (RVDT) separation,

accomplish the following within 60 days after the effective date of this AD, unless already accomplished:

A. Modify the flight control forward control quadrants in accordance with Boeing Alert Service Bulletin 767-27A0062, dated January 24, 1986, or later FAA-approved revisions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the replacements required by this AD.

All persons affected by this directive who have not already received the above specified service bulletin from the manufacturer may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 10, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-13559 Filed 6-16-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-ANE-19]

Airworthiness Directives; Rolls-Royce Dart Mks. 506, 506F, 510, 510A, 511, 511-7E, 514, 514-7 and 515 Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require installation of oversize high pressure turbine (HPT) nozzle guide vanes on certain Rolls-Royce (RR) Dart turboprop engines. The proposed AD is needed to prevent high cycle fatigue (HCF) cracking of the HPT disk which could result in an uncontained engine failure.

DATE: Comments must be received on or before July 30, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 86-ANE-19, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room Number 311 at the above address. Comments delivered must be marked "Docket Number 86-ANE-19".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room Number 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletin (SB) may be obtained from Rolls-Royce Limited—East Kilbridge, Attn: Dart Engine Service Manager, Glasgow G74-4PY, Scotland. A copy of the SB is contained in Rules Docket Number 86-ANE-19, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7085.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is make: "Comments to Docket Number 86-ANE-19". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that HCF cracking of HPT disk rims is occurring in certain Rolls-Royce Dart turboprop engines. These cracks have caused uncontained separation of the disk rim. It has been determined by test that excessive gap between nozzle guide vane groups can allow hot gases to impinge on the disk rim, in turn softening the rim material and allowing HCF cracks to form. There have been 31 known occurrences of disk rim HCF cracking, 19 of which resulted in release of a segment of disk rim, of which 5 were uncontained. Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require installation of oversize HPT nozzle guide vanes to achieve the required interplatform gap between vane groups.

Conclusion

The FAA has determined that this proposed regulation only involves 102 engines and the cost per engine would be negligible. It has also been determined that less than 11 small entities would be affected by this rule. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Avation Regulations (FAR) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Rolls-Royce Limited: Applies to Rolls-Royce Dart Mks. 506, 506F, 510, 510A, 511, 511-7E, 514, 514-7, and 515 turboprop engines.

Compliance is required as indicated unless already accomplished.

To prevent cracking of high pressure turbine disks, install new or reworked oversize high pressure nozzle guide vane(s) in accordance with Rolls-Royce Dart Service Bulletin (SB) Da72-451, Revision 5, dated June 1982, or FAA approved equivalent, within 12 months from the effective date of this AD.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

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

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's alert SB identified and described in this document.

Issued in Burlington, Massachusetts, on June 9, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-13560 Filed 6-16-86; 8:45am]

BILLING CODE 4910-13-M

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14 CFR Part 91

[Docket No. 24942; Petition Notice PR 86-8]

Regulation of VFR Cruising Altitude or Flight Level; Rulemaking Petition of Ronald E. Harbut

Correction

In FR Doc. 86-12973 beginning on page 20979 in the issue of Tuesday, June 10, 1986, make the following correction:

On page 20979, in the third column, in the heading of the document, the name of the petitioner was omitted and should have read as set forth above.

BILLING CODE 1505-02-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Poison Prevention Packaging; Proposed Exemption of Certain Effervescent Tablets Containing Aspirin From Child-resistant Packaging Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed exemption.

SUMMARY: Certain aspirin-containing effervescent tablets are exempt from the Commission's child-resistant packaging requirements of the Poison Prevention Packaging Act of 1970. In response to a petition, the Commission is now proposing to amend that exemption to include additional such tablets. The proposal is based on the Commission's belief that the additional effervescent tablets would not present an ingestion hazard to young children, even if marketed in non-child-resistant packaging.

DATES: Public comments are due no later than August 18, 1986. The exemption is proposed to become effective when published in final form in the **Federal Register**.

ADDRESSES: Comments should be submitted, preferably with four copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Submitted comments may be seen during normal working hours on the 8th floor of 1111 18th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Marozzi, Division of Safety Packaging and Scientific Coordination, Directorate for Health Sciences, Consumer Product Safety Commisison, Washington, DC 20207; telephone (301) 492-6477.

SUPPLEMENTARY INFORMATION:

A. Statutory framework

The Poison Prevention Packaging Act of 1970 (PPPA, 15 U.S.C. 1471-1476) authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance.

Special packaging is often referred to as "child-resistant packaging" and is defined as packaging that is (1) designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.) Under the PPPA, there are effectiveness standards for special packaging (16 CFR 1700.15), as well as a procedure for evaluating effectiveness (16 CFR 1700.20). Regulations have been issued requiring special packaging for a number of household products (16 CFR 1700.14).

B. Background

Under the PPPA, all human oral drugs containing aspirin must be in child-resistant packaging. 16 CFR 1700.14(a)(1). However, effervescent tablets containing aspirin, other than those intended for pediatric use, are exempt from this requirement if (a) the dry tablet contains less than 10 percent aspirin; (b) the tablet has an oral LD-50 (median lethal dose) in rats of greater than five grams per kilogram of body weight; and (c) the tablet, when placed in water, releases at least 85 milliliters of carbon dioxide per grain of aspirin in the dry tablet. 16 CFR 1700.14(a)(1)(i).

The exemption was based, in part, on the effervescent property of the tablets which effectively deters young children from ingesting significant numbers of them. In addition, the Food and Drug Administration was unaware, when it issued the exemption, of serious injuries or illnesses due to ingestion of effervescent tablets by young children.

C. Petition

In March 1985, Miles Laboratories, Inc. petitioned the Commission to amend the effervescent tablet exemption (Petition PP 85-1). (This petition and all other documents in the record of this proceeding are listed at the end of this notice. The numbered citations throughout this notice are to those documents.) Miles' Alka-Seltzer and Alka-Seltzer Plus products already fall within that exemption, but the petition was seeking changes that would exempt its Extra-Strength Alka-Seltzer product, as well [1].

The petition requested changes to all three portions of the exemption: (a) An increase in the permissible amount of aspirin, from less than 10 percent to 15 percent; (b) a lowering of the permissible LD-50 from "greater than five grams per kilogram" to "five grams

or greater per kilogram;" and (c) specification of the required amount of carbon dioxide in terms of the quantity released per tablet, rather than per grain of aspirin [1].

The petition asserted that the requested carbon dioxide specification is appropriate because the total amount of carbon dioxide released is the main factor that prevents accidental ingestion of the dry tablet [1]. In further support of its petition, Miles Laboratories noted that Great Britain exempts effervescent preparations containing up to 25 percent aspirin and submitted human experience and experimental data [1].

Unless noted otherwise, the information discussed in sections D–F below was contained in the petition.

D. Market Information

Extra-Strength Alka-Seltzer is a new effervescent pain reliever and antacid product containing 500 mg. of aspirin per tablet, compared to 324 mg. of aspirin in each tablet of Alka-Seltzer and Alka-Seltzer Plus. It has been marketed thus far only in limited test markets.

Extra-Strength Alka-Seltzer will be marketed in foil packs, with two tablets per pack. The foil packs will be sold in cartons of a 12-tablet size and a 24-tablet size.

Some 75 billion Alka-Seltzer tablets have been produced in the U.S. since 1931. Over four billion Alka-Seltzer Plus tablets have been produced in the U.S. since 1969.

E. Toxicity

According to the Commission's health sciences staff, the mean lethal dose of aspirin in adult humans is 20 to 30 grams, while toxic effects may occur when 10 or more grams are ingested over a period of 12–24 hours [2, 6]. Toxic symptoms include emesis, tinnitis (ringing in the ear), headaches, hyperpnea (abnormally deep and rapid breathing), confusion or mania, and general convulsions [2, 7]. Death is usually due to respiratory failure or cardiovascular collapse [2, 7].

According to the petition, each tablet of Extra-Strength Alka-Seltzer contains 500 mg., or 14.33 percent, of aspirin. When placed in water, 561 milliliters (ml) of carbon dioxide are released, which is 72.7 ml. per grain of aspirin [1]. In comparison, a tablet of regular Alka-Seltzer contains 324 mg. and releases 511 ml. of carbon dioxide [1].

Miles Laboratories conducted acute oral toxicity tests in rats using pure aspirin, regular Alka-Seltzer, and three variations of 500 mg. effervescent tablets with aspirin concentrations ranging from 13.87 to 14.54 percent. The results showed an LD–50 of 1.425 grams/kilogram for the pure aspirin and 5,000 grams/kilogram or greater for the three extra-strength formulations [1].

F. Human Experience

The formulation of effervescent tablets makes unlikely serious injuries to children from their ingestion. They are designed to be ingested only after completion of the chemical reaction between the tablet and water. (The chemical reaction produces the carbon dioxide characteristic of effervescent products.) Being hygroscopic (attracting water), the dry tablet will immediately react with saliva when placed in the mouth. This produces a burning sensation and a foaming action that tends to promote gagging and limits further ingestion. Since the tablets are large, a child would have to chew the tablet in order to swallow it. Such chewing action, however, would increase the effervescent reaction and unpleasant sensation. Any particles swallowed would produce carbon dioxide in the stomach and cause repeated belching.

A child would be unlikely to ingest a large number of effervescent tablets dissolved in water because of the time element and the large quantity of water necessary to dissolve them. It is chemically impossible to dissolve a large number of tablets in a small amount of water. Ingestion of a large amount of concentrated solution of effervescent tablets would result in nausea and vomting due to the salinity of the solution. In addition, taste studies conducted in children under five have confrimed that the children were unwilling to consume significant amounts of effervescent potassium supplement preparations (the tests supported the 1979 exemption from child-resistant packaging for those preparations) [2].

Literature reviews by the petitioner and Commission staff revealed no evicence of toxic effects from ingestion of effervescent products by children under age five [2]. While no human ingestion data exist for Extra-Strength Alka-Seltzer, the available data on other Alka-Seltzer products and other effervescent preparations is consistent with the factors inhibiting serious child ingestions [1,2].

Data from the National Poison Center Network (NPCN) cover approximately 50–60 percent of the U.S. population. For the years from 1979 through part of 1982, NPCN data show 23,430 accidental ingestions of all aspirin and acetaminophen products to children under age five [1]. Of these, 34 cases involved regular Alka-Seltzer and 14 involved Alka-Seltzer Plus, none of which resulted in hospitalization or death [1].

Data from the National Clearinghouse for Poison Control Centers (NCPCC), for the years 1972 through 1976, show 12 ingestions of effervescent acetaminophen preparations. 46 F.R. 13501, Feb. 23, 1981 (the Commission cited these data in its exemption of effervescent acetaminophen preparations from special packaging). One of those ingestions reported lethargy as a sympton and resulted in hospitalization. NCPCC data for 1978–1983 show 52 reported ingestions by children under age five of Alka-Seltzer, and 12 of Alka-Seltzer Plus [2]. The Commission's own children and Poisonings (CAP) data for 1978 through May 1985 show one case of an Alka-Seltzer ingestion in which the victim was treated in a hospital emergency room and released [2].

G. Regulatory Flexibility Certification

Based on available information, the Commission's economics staff believes that there would be no economic impact on the market of final issuance of the proposed amendment to the effervescent tablet exemption [3]. Therefore, using the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601(3), the Commission certifies that the exemption will not, if issued, have a significant economic impact on a substantial number of small entities.

H. Enviornmental Considerations

Rules requiring poison prevention packaging of products and exemptions from such rules normally have little or no potential for affecting the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. *See* 16 CFR 1021.5(c)(3). From the facts presently available, the Commission concludes that the exemption proposed below, if issued, will have no signficiant effects on the environment.

I. Effective Date

The PPPA provides that, except for good cause, no regulation establishing a special packaging standard shall take effect sooner than 180 days or later than one year from its date of issuance. A lead time of six months to a year provides firms with time to "gear up" to child-resistant packaging.

However, an exemption from PPPA requirements is not covered by these time restrictions because it does not establish a special packaging standard and no lead time is necessary. The Administrative Procedure Act does not

require a 30-day lead time for a rule "which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1). Therefore, the Commission is proposing that the amended exemption become effective immediately upon its publication in final form in the Federal Register.

J. Conclusion

Based on the available information, the Commission believes that Extra-Strength Alka-Seltzer tablets present no serious ingestion hazard to young children and need not to be marketed in child-resistant packaging. Historically, effervescent tablets have not been involved in serious injury or illness in young children. Compared to all ingestions of aspirin and acetaminophen products by young children, the number of ingestions of such effervescent tablets as Alka-Seltzer and Alka-Seltzer Plus by young children has been quite small. For the reasons discussed in sections D, E, and F above, the Commission would expect any child ingestions of Extra-Strength Alka-Seltzer to be rare and lacking in seriousness.

(Although the Commission's findings are based on Extra-Strength Alka-Seltzer, the Commission's policy has always been to issue exemptions in generic form. This provides fairness to all firms and conserves Commission resources.)

The petition from Miles Laboratories, Inc. requested three changes to the existing effervescent tablet exemption to permit the marketing of the Extra-Strength Alka-Seltzer tablets. One was a modification in the permissible LD–50 from "greater than five grams" to "five grams or greater." The Commission recognizes that the LD–50 value is statistically derived from experimental animal data and is most appropriately expressed within the limitations of its 95 percent confidence limits. Therefore, the "true" LD–50 value of Extra-Strength Alka-Seltzer could lie anywhere between 3.774 and 6.625 grams per kilogram of body weight. The requested change has no practical or biological significance and would not compromise the safety of young children accidentally exposed to Extra-Strength Alka-Seltzer [2]. It is being proposed below as an amendment to the effervescent tablet exemption.

A second requested change concerned the extent of carbon dioxide release, and whether it is appropriately expressed in terms of the total dose per talet or per grain of aspirin contained in the product. This Commission, after reviewing the existing requirement and the proposed change, no longer believes that any quantification of carbon dioxide release is necessary to assure that the exempted tablets will not pose an ingestion hazard ot young children.

Such quantification is unnecessary in view of the degree of effervescence necessary to achieve a tablet that will rapidly dissolve in water with sufficient effervescence to be marketed as an effervescent tablet [2]. No such quantification is imposed on effervescent potassium supplements for exemption from the Commission's prescription drug child-resistant packaging requirement. 47 FR 10201, Mar. 10, 1982. In addition, the Food and Drug Administration exempted effervescent aspirin preparations from the required drug warning label "Keep out of reach of children" over 20 years ago without regard to quantification of the degree of effervescence. 21 CFR 3.509.

The third change requested by the petition was to increase the permissible aspirin content to 15 percent per tablet. Since effervescent dosage forms effectively deter accidental ingestion, the Commission does not believe that an increased level of aspirin would pose any additional risk to young children.

The Commission has essentially agreed with all three of the changes sought by the petition and is proposing an exemptoin to provide the requested relief. The Commissoin considers PP 85–1 to be granted.

After considering all relevant and available information, the Commission finds preliminarily that special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting the effervescent tablets described below. Based on this preliminary finding, the Commission concludes that a special packaging exemption for them should be proposed (as an amendment to the exemption that now exists).

Accordingly, pursuant to provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91–106; secs. 2(4), 3, 5; 84 Stat. 1670–1672; 15 U.S.C. 1471(4), 1472, 1474) and under the authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–573; sec. 30(a); 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission proposes to amend Part 1700 of Subchapter E of Chapter II of Title 16 as follows: 1. The authority citation for 16 CFR Part 1700 is revised to read as follows:

Authority: Secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Section 1700.1 also issued under Pub. L. 92–573, sec. 30(a), 86 Stat. 1231, 15 U.S.C. 2079(a); § 1700.14 also issued under Pub. L. 91–601, secs. 2(4), 3, 5, 84 Stat. 1670–1672, 15 U.S.C. 1471(4), 1474; Pub. L. 92–573, sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a); 1700.154 also named under secs. 2(4), 3, 5, 84 Stat. 1670–72; 15 U.S.C. 1471(4), 1472, 1474.

2. Section 1700.14(a)(1)(i) is revised to read as follows (although unchanged, the introductory text of paragraph (a)(1) is included for context):

§ 1700.14 Substances requiring special packaging.

(a) * * *

(1) *Aspirin.* Any aspirin-containing preparation for human use in a dosage form intended for oral administration shall be packaged in accordance with the provisions of § 1700.15(a), (b), and (c), except the following:

(i) Effervescent tablets containing aspirin, other than those intended for pediatric use, provided the dry tablet contains not more than 15 percent aspirin and has an oral LD–50 in rats of 5 grams or more per kilogram of body weight.

* * * * *

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Dated: June 10, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of documents in the record

1. Petition (PP 85–1) from Miles Laboratories, Inc.; March 25, 1985.

2. Memorandum from Jane McCaulley, HSPS, concerning PP 85–1; October 3, 1985.

3. Memorandum from Elizabeth W. Leland, HCCS, concerning PP 85–1; March 6, 1986 [RESTRICTED].

4. Garnier, R., Riboulet-Delmas, G., Efthmiou, M.L.; Intoxications Augues Par Le Paracetamol Soluble. Etude Retrospective des Donnes du Centre Anti-Poisons de Paris 1974–1981. Sem. Hop. Paris (1984); 58:435–439.

5. Garnier, R., Riboulet-Delmas, G., Efthmiou, M.L.; Intoxications Augues Par Une Aspirine Vitaminic C Tamponnee Effervescent. Etude Retrospective des Donnes du Centre Anti-Poisons de Paris 1974–1981. Sem. Hop. Paris (1983); 59:1313–1316.

6. Gilman, A.G., Goodman, L.S., Gilman, A. Goodman and Gilman's Pharmacological Basis of Therapeutics. The MacMillan Publishing Co., Inc., New York, 6th ed., 688–698.

7. Gosselin, R.R., Hodges, H.C., Smith, R.P., Gleason, M.N. Clinical Toxicology of Commercial Products. Williams and Wilkins Co., Balt. Md., 4th ed., 368–375.

[FR Doc. 86–13202 Filed 6–16–86; 8:45 am]

BILLING CODE 6355–01–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Proposed Amendment of Water Code of the Delaware River Basin and Administrative Manual—Part III Water Quality Regulations

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on a proposed amendment to its *Water Code* and *Administrative Manual—Part III Water Quality Regulations.* The amendment provides for temporary suspension of stream bacterial criteria for Delaware River Zones 2, 3, and 4.

DATE: The public hearing will be held on July 30, 1986 at 1:30 p.m. Persons wishing to testify at this hearing are requested to register with the Secretary in advance. Comments will be accepted up to the date of the hearing.

ADDRESS: The July 30, 1986 hearing will be held at the Delaware Department of Natural Resources and Environmental Control Auditorium at 89 Kings Highway, Dover, Delaware.

Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. Written comments will be accepted up to the date of the hearing.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission. Telephone (609) 883–9500.

SUPPLEMENTARY INFORMATION: Background material relating to this proposed amendment may be examined at the Commission's offices.

Background and rationale: The Delaware River Basin Commission is gathering data on the quality of the Delaware River and Bay needed to decide if water quality standards, which currently require year-round disinfection of municipal wastewater discharges to interstate waters, should be changed to only require disinfection during primary contact recreation periods.

The Commission held a public hearing on September 12, 1983 on a proposal to change its disinfection requirements from year-round to seasonal provided public health would be protected. After consideration of the hearing testimony and further deliberation, it was concluded that additional data were needed before a decision could be made.

The Commission's Water Quality Advisory Committee, which consists of representatives of the U.S. Environmental Protection Agency, Delaware, New Jersey, New York and Pennsylvania, was asked to recommend a study design to provide the necessary data. Representatives of the U.S. Food and Drug Administration and the Delaware and New Jersey units responsible for shellfish management and protection participated in the Committee discussions on this issue. To obtain the needed data, the Water Quality Advisory Committee recommended a two-year monitoring program to begin in July 1986. EPA and the Basin states support this program.

During the first year, discharges to tidal waters above the Pennsylvania-Delaware state line at Marcus Hook (Zones 2, 3 and 4) will not be required to provide disinfection from October, 1986 through April, 1987. During the second year, continuous disinfection will be required for the entire year. During both years samples of the Delaware River and upper Delaware Bay will be collected and analyzed for bacterial and related parameters. The results obtained under different disinfection practices will be compared to assess the impact of changes in disinfection requirements.

Each municipal discharger has an NPDES permit issued by the state (in accordance with federal law) setting forth effluent limits. Current NPDES permits require year-round disinfection. The permits for municipal dischargers to the tidal Delaware River between Trenton, N.J., and the Pennsylvania-Delaware state line must be modified to suspend this requirement for the period October 1, 1986 to April 30, 1987.

Commission and state water quality standards for the same area require year-round disinfection. In order to carry out the study these standards must be suspended for the period October 1, 1986 to April 30, 1987. It is proposed to suspend river bacterial criteria applicable to Zones 2, 3, and 4 for that period. The study will provide data to permit design of bacterial criteria for the October-April season. Available, but limited, data indicates that all existing water uses will be protected. The study will provide sufficient additional data to assess whether that is the case.

This hearing addresses amendment of Commission standards. Amendments of state standards and NPDES permits will be accomplished by separate state actions.

The subjects of the hearing will be as follows:

Amendment to the *Water Code* and *Administrative Manual—Part III Water Quality Regulations.*

The following amendment is proposed:

Amend the *Water Code* and *Administrative Manual—Part III Water Quality Regulations* by inserting the following new temporary section in Section 3.30 to read:

The application of subsections 3.30.2C8, 3.30.3C8, and 3.30.4C8 to all existing dischargers in Zones 2, 3, and 4 is temporarily suspended from October 1, 1986 to April 30, 1987 unless reinstated earlier in whole or in part by order of the Executive Director. This section shall expire on May 1, 1987.

List of Subjects in 18 CFR PART 410

Water pollution control.

Delaware River Basin Compact, 75 Stat. 688.

Dated: June 9, 1986.

Susan M. Weisman,

Secretary.

[FR Doc. 86–13451 Filed 6–16–86; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 95, 146, 150, 173, and 177

46 CFR Parts 4, 5, 35, 78, 97, 109, 167, 185, 196, and 197

[CGD 84–099]

Operating a Vessel While Intoxicated

Correction

In FR Doc. 86–11590 beginning on page 18902 in the issue of Friday, May 23, 1986, make the following corrections:

1. On page 18902, second column, in the heading, the subject line is corected to read as set forth above.

2. In the same column, in the "SUMMARY", in the eighth line, "legislations" should have read "legislation". In the sixteenth line, "determined" should have read "determining".

3. In the third column, ninth line, "and alcohol" should have read "that alcohol".

4. On page 18903, third column, fifth line, "exercise" was misspelled.

5. On page 18908, second column, eighth line, "interest" should have read "interested".

§ 95.010 [Corrected]

6. On page 18909, third column, in § 95.010, seventh line, insert "21" before "CFR".

§ 95.020 [Corrected]

7. On page 18910, first column, in § 95.020(d), tenth line, "collision" should have read "collusion".

8. On page 18911, first column, first line, the section heading designated as "§ 117.05" should have read "§ 177.05".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 62

National Natural Landmarks Program, National Significance Criteria; Reopening of Comment Period

AGENCY: National Park Service, Interior.

ACTION: Reopening of public comment period.

SUMMARY: On May 2, 1986, the National Park Service published in the **Federal Register** (51 FR 16349) a proposed rule to revise the National Natural Landmarks Program national significance criteria. Because this notice may not have come to the attention of many persons and organizations who would have wanted to react and comment on it, the National Park Service is reopening comment period for 60 more days, i.e., from June 2, 1986 to August 18, 1986.

DATE: Written comments, suggestions or objections will be accepted until August 18, 1986.

ADDRESS: Comments should be addressed to: Arthur L. Stewart, Interagency Resources Division, National Park Service, Department of the Interior, P.O. Box 37127, Washington, D.C. 20013–7127, (202) 343–9500.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stewart, Interagency Resources Division, National Park Service, Department of the Interior, P.O. Box 37127, Washington, D.C. 20013–7127, (202) 343–9500.

Dated: June 5, 1986

Jerry L. Rogers,

Associate Director, Cultural Resources.

[FR Doc. 86–13395 Filed 6–16–86; 8:45 am]

BILLING CODE 4310-70-M

POSTAL SERVICE

39 CFR Part 320

Restrictions on Private Carriage of Letters; Proposed, Suspension of the Private Express Statutes; International Remailing

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: On March 21, 1986 the Postal Service published in the **Federal Register** (51 FR 9852) an advance notice of proposed rulemaking and request for information on which to develop a factual record concerning international remailing, and also withdrew a previously published proposed rule.

The purpose of this document is to propose a new suspension of the Private Express Statutes for international remailing. This suspension would implement the statement of March 4, 1986 by John McKean, Chairman of the Board of Governors, that the cloud should be removed from the practice of international remailing. See 51 FR 9853. The proposed suspension would permit the private uninterrupted carriage of letters from the United States to a foreign country for ultimate delivery outside of the United States.

DATE: Comments must be received on or before July 17, 1986.

ADDRESS: Written comments should be addressed to the General Counsel, Law Department, United States Postal Service, Washington, D.C. 20260–1113. Copies of all written comments will be available for inspection and photocopying between 9:00 AM and 4:00 PM, Monday through Friday, in Room 6147, 475 L'Enfant Plaza, West, SW., Washington, D.C. (until on or about June 23, 1986, the location will be Room 5128, 955 L'Enfant Plaza, SW., Washington, DC.).

FOR FURTHER INFORMATION CONTACT: Charles D. Hawley (202) 268–2970.

SUPPLEMENTARY INFORMATION: On October 10, 1985, the Postal Service proposed to amend several provisions of the regulations, 39 CFR Parts 310–320, that implement the Private Express Statutes. 50 FR 41462 (1985). The purpose of the proposal for the most part was to clarify the administrative suspension of the Statutes for extremely urgent letters, 39 CFR 320.6, with respect to the practice of international "remailing." Private firms, believing themselves to be acting pursuant to this suspension, had begun to carry bulk shipments of letters from American firms, entirely outside the United States Mails, to foreign countries. There the letters, addressed to individuals in countries other than the United States, were deposited with a foreign post office, or "remailed," and delivered to their various addresses as ordinary mail.

The Postal Service had determined in an advisory opinion, 39 CFR 310.6, that the carriage of letters in bulk, under the circumstances characteristic of the remailers' operations, did not comply with the terms of that suspension. Advisory Opinion 83–7 (May 11, 1983). During December 1984, the Postal Service requested the Department of Justice to authorize suit to enjoin the activities of those remailers who were continuing to violate the Private Express Statutes in contravention of the advisory opinion. In August 1985 the Department informed the Postal Service that it declined to do so.

> While we do not question the Postal Service's authority to regulate the solely domestic activities of international courier services, our decision is based on the conclusion that the Postal Service's implementing regulations may reasonably be construed to permit the complained of activity.

The effect of this decision was to allow the private carriage of letters that were not extremely urgent under the color of a suspension adopted by the Postal Service for letters that were extremely urgent. Of perhaps more importance, its effect was to create a significant exception to the Private Express Statutes that had never been approved, or even contemplated, either by Congress, or by the Postal Service in the exercise of its power to suspend the operation of the Statutes, 39 U.S.C. 601(b). To correct this situation and to restore the suspension for extremely urgent letters to its original purpose, the Postal Service in October 1985 proposed the clarifying amendments noted above.

In response to the publication of this notice, the Postal Service received approximately sixty comments, virtually all of them critical of the proposal. Subsequently, John McKean, Chairman of the Board of Governors of the Postal Service, stated on March 4, 1986, that the Postal Service would be initiating a new rulemaking proceeding

> to remove the cloud [of doubt as to lawfulness] that now hangs over the international remail services and preserve the benefits of desirable competition between the Postal Service and private companies.

As the first step in implementation of this statement, the Postal Service on March 21, 1986, published in the **Federal Register** a notice withdrawing the October 10, 1985 proposal and soliciting

information on the benefits to the public of remailing to become part of a "fully developed factual record" upon which to predicate a new suspension (51 FR 9852). In the hope of further supplementing the record, the Postal Service on May 12, 1986 announced that it would hold a public meeting (51 FR 17366), which was held on May 22, 1986. A transcript of that meeting is included in the record of this rulemaking.

In the related proceedings described above, the Postal Service has heard the views of a great many members of the public and several other Federal agencies on the question of the benefits which the public may receive from the availability of private international remail services. It is clear that the overwhelming majority of those who have commented favor a regulation which permits such services. The reasons which they advance are several: It is faster, less expensive, more reliable, and more responsive than the air mail service provided by the Postal Service. It is said that American business is better able to compete in foreign markets when service of this nature is available. Competition in the provision of international letter delivery service is also said to be inherently beneficial, both to the customers who use this service and to the Postal Service itself.

Some commenters have also directed criticism against the terms of the proposed amendments. In view of the fact that those proposals have been withdrawn, we think it unnecessary to respond to these criticisms.

Applicability of Private Express Statutes to International Shipments of Letters

One comment raised the threshold question of the applicability of the Private Express Statutes to international shipments of letters. This is fundamental, of course, because, if the Statutes were not applicable, no suspension or exception would be needed to permit the activities of the remailers. The Postal Service is not persuaded, however, that there is any merit to this comment. It is based on the commenter's views of public policy, but it fails to take into account clear expressions of the intent of Congress to apply the Statutes to letters leaving and entering this country.

This intent can be seen most clearly with respect to two of the Statutes which contain provisions relating to the transportation of letters by vessels to and from foreign countries. 18 U.S.C. 1699; 39 U.S.C. 602. The legislative history of the 1952 amendment to 18 U.S.C. 1699 leaves no room for doubt that Congress contemplated the application of the Statutes to letters arriving from foreign countries. See S. Rep. No. 1794, 82d Cong., 2d Sess. June 19, 1952:

> Under existing law, no vessel arriving in a given port is allowed to break bulk until all letters on board are delivered to the nearest post office. To illustrate how this works is to take the port of Boston, generally the first call on the North Atlantic route of vessels from Europe. . .

The text of 39 U.S.C. 602(a) relating to outgoing letters is, if anything, even more clear on this point:

> **§ 602. Foreign letters out of the mails**
>
> (a) Except as provided in section 601 of this title, the master of a vessel departing from the United States for foreign ports may not receive on board or transport any letter which originated in the United States that—
>
> (1) hsa not been regularly received from a United States post office. . . .

We continue to adhere, therefore, to our conclusion that the Statutes are applicable to the carriage of international letters within the United States.

A second related point raised by several commenters is that there is no need for action by the Postal Service because other agencies of the Executive Branch, particularly the Department of Justice, have concluded that remailing is lawful under current regulations.

We find no merit in this comment, either.The Postal Service is in the best position to know its own intention when it adopts a suspension. The Advisory Opinions have stated these intentions consistently through the years. Furthermore, the regulation at issue has never been the subject of adjudication, or of an Opinion of the Attorney General. Under these circumstances, we think it was reasonable for Chairman McKean to conclude that a further rulemaking is necessary.

A number of other comments challenge on various grounds the authority of the Postal Service to regulate the private carriage of letters and, as a carrier of letters, to adopt regulations which, it is said, unfairly handicap competing private firms also engaged, or wishing to engage, in the international carriage of letters. We consider, however, that these comments are not well taken. In adopting the regulations contained in Parts 310–320, Title 39, Code of Federal Regulations, the Postal Sevice has merely implemented the private Express Statutes. It is these Statutes which limit the private carriage of letters upon which postage has not been paid.

This is not a situation in which the postal Service is imposing regulatory limitations upon an industry which would otherwise conduct its operations free of governmental restraint. The regulations define, interpret, and clarify the Statutes and, in the case of Part 320, relax for specific limited purpose, the restrictions of the Statutes, to provide as lawful basis for private carriage which the Statutes otherwise would not permit. If the postal regulations, and particularly those in Part 320, were not in effect, the result would not be unrestricted private competition with the Postal Service but no lawful private carriage at all, except as allowed by very limited statutory exceptions.

In enacting the Private Express Statutes, Congress has made the policy decision that the revenues of the Postal Service should be protected by restricting the private carriage of letters. The Postal Service is not simply one of serveral enterprises providing letter delivery services. It is, rather, a Government agency which is to be "operated as a basic and fundamental service" for the American people. 39 U.S.C. 101(a). While the Postal Service has endeavored, since the enactment of the Postal Reorganization Act, to operate in conformity with the business practices and management methods of the private sector, it is nonetheless a public entity and as such is not free to disregard Congress' decision. Under the circumstances, we conclude that there is no valid basis for suggesting that the Postal Service is unlawfully or unfairly attempting to regulate the private sector.

The Public Interest in Remailing

As we have noted above, the overwhelming majority of the comments on our proposals have favored allowing the remailers to compete with the Postal Service and have advanced a number of reasons for this result. Greater speed of delivery, in comparison with air mail, and its resultant benefits to America's ability to compete in overseas markets is perhaps the most frequently raised point. The record is less than fully factual as to this matter. Two commenters have submitted tables showing a comparision of delivery times for letters sent via the Postal Service and via remailers to various cities in Europe, Asia, Africa, and Latin America. These comparisons almost invariably show remailed items with a shorter delivery time. Little or no explanation is given, however, of the manner in which these tables were compiled, of whether they show average times for more than one remailer, of what period of time or what volume of letters the figures represent, in short, how valid the comparisons are. The figures themselves show wide fluctuations between cities, in the differentials between the Postal

Service and remailers, and in some instances between times by the same mode to the same city. While the apparently anecdotal character of these tables does not add to their credibility, they may well be the most reliable compilations available on this subject. They are, moreover, consistent with the conclusory statements of a number of other commenters.

On the issue of the need for remailing services to assist in making American business more competitive in the world market, the comments provide little more than conclusions. It seems self-evident that a more prompt and reliable letter delivery service would, to some extent, assist parties to existing or prospective business transactions by facilitating written communication. What is less clear, however, is the extent to which any difference that may exist between air mail and remail is significant in this respect, particularly given the wide fluctuations in the delivery time of remail services which we have noted above. We had sought to obtain information from the public which would permit us to determine whether there is a range of time within which delivery is critical to the success of competitive efforts, but our efforts were not successful. Nonetheless, notwithstanding the imprecision of the data, we think it reasonable to conclude that in general the availability of remail services assists American firms in competing internationally.

As to the cost of remail, we have little factual information about the rates charged by remailers. The comments frequently assert that they are lower and we know from observation of promotional material distributed by remailers that they characteristically advertise rates that are lower than air mail, sometimes simply a percentage of the air mail rates. While many comments assert that speed or reliability, rather than price, is the main incentive for the use of remailers' services, we have no doubt that the remailers as a group charge lower rates than the prevailing rates for the Postal Service's international air mail service.

As with the previous points, the record contains little hard evidence as to either the comparative reliability of remail delivery or of the responsiveness of the remailers to the needs of their customers, save that the collection of letters from customers' locations is a characteristic of remailers, services. Other than that, we have only the generalized and conclusory statements of commenters to support these points.

There is little or no reliable information as to the amount of revenues diverted to date by the activities of remailers. Estimates run from about $25 million to $500 million annually. One comment to the original proposal concluded that the net revenue loss to the Postal Service was in the neighborhood of $3 million a year. Without attempting to determine the accuracy of these estimates, we can say that the total amount of revenues of the Postal Service from international mail—much of which is not letters and so is not protected from competition by the Statutes—was $882.3 million for the most recently published figures. Annual Report of the Postmaster General, 1985. We conclude that the loss of revenues of what is necessarily a lesser amount is not so adverse to the Postal Service as to outweigh the perceived benefits to the public interest from allowing remailing to continue by virtue of the suspension which follows.

Proposed Suspension for International Remailing

For the reasons given above the Postal Service proposes to amend its regulations by adding a new suspension for international remailing. This new suspension, which would be codified as § 320.8 of title 39, Code of Federal Regulations, would suspend the operation of the Statutes

> to permit the uninterrupted carriage of letters from a point within the United States to a foreign country for deposit in its domestic or international mails for delivery to an ultimate destination outside the United States.

This, we think, fairly summarizes the essential character of remailing. It is intended as a forthright acceptance of that practice as the Postal Service now understands it. It is essential, however, that the terms of the suspension be adhered to in good faith and that the suspension not be broadened by abuse to encompass private carriage under circumstances not contemplated in its adoption.

We particularly invite attention to two provisions of this paragraph. The first is "uninterrupted" as a qualification of allowable carriage. By this we mean simply that to come within the terms of the suspension the carriage of letters from a point within the United States to the point at which they are deposited in a foreign mail stream must be substantially continuous. It is not necessary that they be continuously in the hands of a single carrier, nor is it a violation of the terms of the suspension if they are held for sortation or mixed with letters originated by another sender. They must not, however, be opened, read, or otherwise used in the course of carriage, nor may they be delivered during carriage to any person not involved in that carriage. To help in explaining the meaning of this qualification, we have included in the text of the proposed regulation two contrasting examples of circumstances in which carriage is and is not interrupted. This qualification does not alter the current practice of remailing. It is intended rather to ensure that the suspension does not serve as a pretext for allowing private carriage of letters from one point to another wholly within the United States.

The second provision to which we particularly invite attention is that which requires that letters carried under the suspension be for ultimate delivery outside the United States. The suspension is not intended for the delivery of letters sent to persons within this country. That would be totally at odds with the revenue protection purposes of the Private Express Statutes and would in no way advance the public interest in improved delivery of letters to foreign locations. As with the requirement that carriage be uninterrupted, this provision is intended to ensure that the suspension not be abused. This provision is reinforced by proposed paragraph (b) which states:

> This suspension shall not permit the shipment or carriage of a letter or letters out of the mails to any foreign country for subsequent delivery to an address within the United States.

Finally, as was true in the adoption of the suspension for extremely urgent letters, see 39 CFR 320.6(e), the regulation provides in proposed paragraph (c) an administrative sanction which may be brought into play in the event of a violation of the substantive terms of the suspension. This sanction is the revocation of the suspension *as to the particular shipper or carrier* for a period of up to a year. This procedure, which involves an opportunity for a hearing before the Postal Service's Judicial Officer Department, offers a flexible means of enforcement of the limited restrictions which qualify the suspension. They are reasonable and appropriate under the circumstances.

In view of the above considerations, the Postal Service proposes to amend 39 CFR Part 320 as follows:

List of Subjects in 39 CFR Part 320

Postal Service, Computer technology, Advertising.

PART 320—SUSPENSION OF THE PRIVATE EXPRESS STATUTES

1. The authority citation for Part 320 is revised to read as set forth below, and

the authority citations following all the sections in Part 320 are removed.

Authority: 39 U.S.C. 401, 404, 601–606; 18 U.S.C. 1693–1699.

2. A new § 320.8 is added to read as follows:

§ 320.8 Suspension for international remailing.

(a) The operation of 39 U.S.C. 601(a)(1) through (6) and § 310.2(b)(1) through (6) of this chapter is suspended on all post routes to permit the uninterrupted carriage of letters from a point within the United States to a foreign country for deposit in its domestic or international mails for delivery to an ultimate destination outside the United States.

Example (1) The letters to overseas customers of commercial firm A in Chicago are carried by Carrier B to New York where they are delivered to Carrier C for carriage to Europe. Carrier C holds the letters in its distribution center overnight, then sorts them by country of destination and merges them with letters of other firms to those countries before starting the carriage to Europe in the morning. The carriage of firm A's letters is not interrupted. The suspension for international remailing applies to the carriage by Carrier B and by Carrier C.

Example (2) The bills addressed to foreign customers of the Chicago branch office of commercial firm D are carried by Carrier E to New York where they are delivered to the accounting department of firm D's home office. The accounting department uses the information in the bills to prepare its reports of accounts receivable. The bills are then returned to Carrier E which carries them directly to Europe where they are entered into the mails of a foreign country. The carriage of the bils from Chicago to Europe is interrupted in New York by the delivery to firm D's home office. The suspension for international remailing does not apply to the carriage from Chicago to New York. It does apply to the subsequent carriage from New York to Europe.

(b) This suspension shall not permit the shipment or carriage of a letter or letters out of the mails to any foreign country for subsequent delivery to an address within the United States.

Example (1) A number of promotional letters originated by firm F in Loss Angeles are carried by Carrier G to Europe for deposit in the mails of a foreign country. Some of the letters are addressed to persons in Europe, some to persons in the United States. The suspension for international remailing does not apply to the letters addressed to persons in the United States.

(c) Violation by a shipper or carrier of the terms of this suspension is grounds for administrative revocation of the suspension as to such shipper or carrier for a period of one year in a proceeding instituted by the General Counsel in accordance with Part 959 of this chapter. The failure of a shipper or carrier to cooperate with an authorized inspection or audit conducted by the Postal Inspection Service for the purpose of determining compliance with the terms of this suspension shall be deemed to create a persumption of a violation for the purpose of this paragraph (c) and shall shift to the shipper or carrier the burden of establishing the fact of compliance. Revocation of this suspension as to a shipper or carrier shall in no way limit other actions as to such shipper or carrier to enforce the Private Express Statutes by administrative proceedings for collection of postage (see § 310.5) or by civil or criminal proceedings.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86–13565 Filed 6–16–86; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action MO 2069; FRL–3032–5]

Approval and Promulgation of State Implementation Plans: Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking (PRM).

SUMMARY: In this notice, EPA is proposing to approve a draft State Implementation Plan (SIP) revision submitted by the State of Missouri. The purpose of this revision is to reduce volatile organic compound (VOC) emissions from the refueling of motor vehicles. The reduction of VOCs is necessary to reduce ozone levels in the St. Louis ozone nonattainment area. Today's notice is published to advise the public of EPA's proposed action and to request comments.

DATE: Comments must be received on or before July 17, 1986.

ADDRESSES: Comments should be sent to Deann K. Hecht, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The State submittal is available for inspection during normal business hours at the above address, and at the Missouri Department of Natural Resources, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65102.

FOR FURTHER INFORMATION CONTACT: Deann K. Hecht at (913) 236–2893 or FTS 757–2893.

SUPPLEMENTARY INFORMATION: On March 4, 1986, the State of Missouri submitted a draft revision to the Missouri SIP. The draft revision is an amendment to State rule 10 CSR 10–5.220 for the St. Louis Metropolitan Area entitled "Control of Petroleum Liquid Storage, Loading, and Transfer." Proper public hearing was held on this amendment on January 16, 1986.

This revision will require the control of VOC emissions from the refueling of motor vehicles. This is known as State II vapor recovery. Stage I vapor recovery, controlling emissions from loading gasoline into underground tanks, has been required since 1977. The intended effect is to reduce ozone levels in the St. Louis nonattainment area by reducing the emissions of the VOCs that react in the atmosphere to form ozone. The amendment is being submitted as part of the State's plan to attain the ozone standard by December 31, 1987, which is the attainment date for the St. Louis ozone nonattainment area.

EPA has reviewed the proposed revisions and found that they will effectively achieve the desired VOC reductions and are consistent with the California Stage II vapor recovery regulations which EPA used as a benchmark for evaluation. California has the best working Stage II program, and there is no federal guideline for Stage II programs; therefore, EPA used the California regulations s a basis for reviewing the Missouri regulations.

The Missouri regulation requires owners or operators of stationary gasoline tanks with a capacity of greater than 1,000 gallons to install the Stage II vapor recovery equipment. Stationary tanks used primarily for the refueling of agricultural implements or implements of husbandry are exempt from the rule.

There are currently three types of Stage II systems in the United States: the vapor balance, the hybrid, and the vacuum assist systems. The State has not specified which of the three vapor recovery systems should be installed. The individual owners and operators may choose from the three systems; however, the State has specified that only equipment certified by the Director of the Missouri Department of Natural Resources can be installed, used, or maintained. A requirement for a vapor recovery system or a modification to a system to be certified is that the system must first be certified by the State of California Air Resources Board (ARB) as having a vapor recovery or removal efficiency of at least 95 percent. The State used a 91.5 percent efficiency to determine the emission reductions in the August 1, 1985, SIP. The regulation has

also provided for the decertification of a system by the Director if the system is prone to malperformance such that the purpose or requirements of the rule is defeated.

The Missouri regulation requires operating instructions for the vapor recovery system to be posted in the gasoline dispensing areas. This will show the public how to effectively use the vapor recovery equipment to obtain a greater in-use efficiency. The operating sign is required in California and has helped in the success of their Stage II program.

The State will submit to EPA a letter of assurance that they have adequate funding and staff to implement and enforce the Stage II program, and a letter with inspection scheduling and frequency before final approval is taken on this action. The Missouri regulation has a provision for allowing the Director to tag a vapor recovery system or component "out of order" if there is a defect in the equipment. An internal list of defects is referenced in the rule and will be made readily available to all the owners and operators. When a vapor recovery system is tagged "out of order", no person shall use or permit the use of that system or component until it has been repaired, replaced, or adjusted and the Director has: 1) reinspected the system or component, 2) found it to be in good working order, and 3) removed the "out of order" notice. The Director must reinspect the system or component within 30 days from the date on which it was marked "out of order". The "out of order" procedure has worked effectively in the California program. It forces the owner or operator of a service station to properly maintain their vapor recovery system. This allows for a greater in-use efficiency.

Final compliance with the regulation is required by December 31, 1987. The State has required the owners and operators to submit to the Director by no later than October 1, 1986, the vapor recovery system specifications and general installation details. Also, notification of installation must be submitted no later than 60 days prior to installation.

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). EPA believes the proposed regulations are approvable; however, if the proposed revisions are substantially changed, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by Missouri and submitted to EPA for incorporation into the SIP.

Proposed Action

EPA is proposing to approve the draft SIP revision described in this Notice with the understanding that the State will not make any significant changes to the final revision.

This State submission constitutes a proposed revision to the Missouri SIP. The Administrator's decision to approve or disapprove this proposed revision will be based on the comments received and on a determination of whether or not the revision meets the requirements of Sections 110 and 172 of the Clean Air Act and of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans, and of the 1982 SIP policy (46 FR 7184, January 22, 1981).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

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

List of subjects in 40. CFR Part 52: Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42. U.S.C. 7401–7642.

Dated: April 8, 1986.

Morris Kay,

Regional Administrator.

[FR Doc. 86–13613 Filed 6–16–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 799

[OPTS–42080; FRL–3001–9]

Triethylene Glycol Monomethyl, Monoethyl, and Monobutyl Ethers; Proposed Test Rule

Correction

In FR Doc. 86–10704, beginning on page 17883, in the issue of Thursday, May 15, 1986, make the following corrections:

PART 799—[CORRECTED]

1. On page 17883, in the subject heading of this document, "Monethyl" has been corrected to read "Monoethyl".

2. On the same page, first column, in the SUMMARY, fifth line, "monomethyl" should read "monoethyl"and in the sixth line, "glycolmonobutyl ether" was misspelled.

3. On page 17892, second column, in § 795.250(e)(2), fifth line, "Wayne" should read "Wayner".

4. On the same page, third column, fifth line, "Teratology" was misspelled.

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 431

[BERC–372–P]

Medicaid Program; Mandatory Second Surgical Opinion Requirements for Medicaid Recipients

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

ACTION: Proposed rule.

SUMMARY: This proposal would amend current Medicaid rules to require that each State's Medicaid plan include a program requiring second surgical opinions for certain surgical procedures. The regulations would require, at a minimum, that the State's program apply to ten common elective surgical procedures performed for the Medicaid population in each State. Federal financial participation (FFP) would be denied for these procedures if the recipient did not obtain a second opinion unless exceptions or waivers of the requirement were applicable. States with an alternative second surgical opinion program (SSOP) or existing review programs that prevent unnecessary surgery and are cost-effective would be allowed to obtain HCFA approval of their programs in lieu of meeting new requirements.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on July 17, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–372–P, P.O. Box 26676, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to:

Fay Iudicello, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208,

New Executive Office Building, Washington, DC 20503.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–372–P. 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 Ave., SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Ernestine Jones, (301) 597–0321.

SUPPLEMENTARY INFORMATION:

I. Background

A. Description of Second Surgical Opinion Programs (SSOP)

Second surgical opinion programs are formal mechanisms whereby patients recommended for surgery are either encouraged or required to obtain an independent medical opinion prior to performance of the procedure. The purpose of the second opinion is to inform a patient whether an independent medical evaluation confirms the diagnosis and the necessity of surgery, and to offer for consideration any alternative treatment. Second opinion programs most effectively focus on elective surgical procedures (i.e., those that may be planned in advance with no risk to patient life or well-being).

Second opinion programs can be either voluntary or mandatory. In a voluntary program, the second opinion is available as a health insurance benefit for use at the patient's discretion. In a mandatory program, the third party insurer requires the patient to obtain a second opinion prior to surgery as a condition of reimbursement. That is, payment may be denied for the surgery unless a second opinion has been obtained.

In both voluntary and mandatory second opinion programs, the final decision to have surgery is generally made by the patient. Since the focus of the program is on increased patient awareness of both surgical and nonsurgical treatment options, most insurers do not require the second opinion to endorse the surgery option as a condition for payment for the surgery.

Although there can be great variation of second surgical opinion programs, there are a number of elements common to all. These are: (a) Notification to patients and the medical community of the availability and requirements of the second opinion; (b) identification of surgical procedures for which the second opinion is required or suggested; (c) identification of physicians who are available and qualified to provide second opinions; (d) provision for payment for the independent second opinion; and (e) a referral mechanism for patients and/or medical records. Mandatory programs usually also include a pre-screening aspect to identify potential recipients of unnecessary surgery, a listing of exceptions to the screening requirement based on geographical or time constraints, or other considerations; and a mechanism to verify that a second opinion was obtained prior to the surgery.

B. SSOPs Under Medicaid

Between 1971 and 1980, the incidence of surgical procedures increased at a rate more than four times greater than that of the population. In January 1976, the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce reported that an estimated 2.4 million unnecessary surgeries were performed in 1974 at the expense of 11,900 lives and about $4 billion. The Subcommittee recommended that the then Department of Health, Education and Welfare promptly institute a program of independent second professional opinions to confirm the need for elective surgery underwritten by Medicare and Medicaid.

In an effort to comply with Congress, mandate, we initiated a voluntary National Second Surgical Opinion Program (NSSOP) for Medicare and Medicaid in 1977, which is ongoing. This program encourages patients to be more informed and involved in decisions on their health through the use of public service announcements, referral centers, and patient information and educational materials on the advantage of second opinions. In addition, we initiated several second opinion demonstrations.

Forty-two State Medicaid programs offer some type of SSOP, the majority of which are voluntary. These programs encourage individuals to obtain second opinions at no cost to themselves, but do not require the individual to participate, nor to avoid surgery if the second opinion suggests alternative treatment.

Currently, there are 10 States that have adopted a mandatory SSOP for their cost containment initiative. These States focus their SSOPs on up to ten elective surgical procedures that, in their experience, are frequently performed for the Medicaid population. In these States, Medicaid does not reimburse the physicians for performing the surgery without a second opinion. These States are Massachusetts, Michigan, Minnesota, Missouri, New Jersey, Oregon, Tennessee, Virginia, Wisconsin, and Washington. The State of New York is in the process of establishing a mandatory second opinion requirement in its Medicaid program.

C. Effectiveness of SSOPs

In March 1982, the Secretary submitted a report to Congress based on the results of our evaluation of second surgical opinion programs. The finding revealed that mandatory programs have proven successful for Medicaid and have the potential for substantial cost savings. The mandated SSOPs operated by State Medicaid Agencies clearly demonstrated that they were effective in reducing both the volume of elective surgeries and the costs associated with them. Three States, Massachusetts, Michigan, and Wisconsin had performed cost studies and all concluded that the SSOPs will result in a 20 to 35 percent reduction in elective surgeries at annual cost savings of from $1 million to $3.7 million, an average of $3.48 for each Medicaid recipient residing in these States.

II. Proposed Mandatory Second Surgical Opinion Program

Section 1902(a)(30)(A) of the Social Security Act provides that a State plan for medical assistance must "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan . . . as may be necessary to safeguard against unnecessary utilization of such care and services to assure that payments are consistent with efficiency, economy, and quality of care." Under this authority and section 1902(a)(4) of the Act which provides that State plans shall include "methods of administration found by the Secretary to be necessary for proper and efficient operation of the plan", some States now implement voluntary or mandatory second surgical opinion programs. We believe the clear evidence of program savings and patient well-being resulting from madatory SSOPs make it appropriate to require all States to use mandatory SSOPs or effective

alternatives to assure efficient program administration.

We propose to require that each State's Medicaid plan include a madatory program for a second surgical opinion for selected elective high-cost procedures which generally can be postponed without undue risk to the patient. The objectives of the mandatory program are to prevent unnecessary surgery and be cost-effective. State plans would be required to provide that payment would not be made if the recipient did not obtain a second opinion (unless stated exceptions were applicable). Federal financial participation (FFP) for the identified procedures would not be available if the recipient did not obtain a second opinion under such circumstances.

Second surgical opinions would be required whether the elective surgical procedures were performed on an inpatient or outpatient basis. Federal financial participation would be available for the second opinion itself even if it does not concur with the initial recommendation for surgery. If the second opinion does not confirm the first, a State, at its option, may obtain Federal financial participation for a third opinion to corroborate need for surgery.

In recognition of variations in utilization of surgical procedures in different States, and variations in physician referral patterns, we are providing States considerable latitude in designing their mandatory SSOP. For example, when the second opinion does not confirm the first, the State, at its option, may refer the recipient for a third opinion or may decide to allow the surgery if the recipient still requests it. Another State option would be to deny payment for the surgery under § 1902(a)(30)(A) of the Act, which allows States to exclude services determined unnecessary. Regardless of specific variations, State programs must comply with certain minimum requirements, as identified below.

We would require, at a minimum, that the State's program apply to ten elective surgical procedures that are costly or frequently performed for the Medicaid population in the State. We would define surgery as a procedure which can be scheduled in advance, i.e., not an emergency procedure, and one that is discretionary on the part of both physician and patient. If surgery is "elective", failure to undergo such surgery does not pose a mortality threat to the patient and scientific evidence does not indicate clearly greater life expectancy as a result of election of the surgery.

The State plan would have to name the procedures and specify the criteria used to select them. We would expect the criteria to take into account the costs of the procedure and attendant services (e.g., hospitalization and follow-up care), anticipated high non-confirmation rates, volume of procedures and the elective nature of the procedure. Procedures identified in Massachusetts, the first State to use a mandatory SSOP in its Medicaid program have included, for example, tonsillectomy/adenoidectomy, menisectomy, hysterectomy, cholecystemy, submucous resection, spinal fusion/disc surgery, hemorrhoidectomy and excision of varicose veins.

The State agency must analyze SSOP data, including cost data, at least annually to determine whether changes should be made in the list of elective surgical procedures. The State must agree to provide such information upon request to the Department.

The State would be required to establish a mechanism for obtaining the second opinon from a qualified physician, and would be granted flexibility in determining physicians' qualifications for issuing second opinions. For example, a State may choose to restrict opinions for some procedures to certain specialists or it may identify certain physicians as a group to be available for any second opinion patient referrals. Further, a State would be free to contract with entities that currently perform review functions to provide physicians for second opinion referrals. Regardless of the mechanism established by the State, the agency must specify the qualifications of those physicians who would be consulted, and must assure that the second opinion is not furnished by a physician whose evaluation cannot be considered "independent" due to common interest or other close ties with the first opinion physician.

All second opinion programs are based on medical judgments and we recognize that many elements enter into a medical decision to recommend one or another form of treatment. The second opinion must consider the proposed surgery as one option and then make a recommendation as to preferred mode of treatment based on medical findings.

Second opinions would not be required under certain circumstances. If it were necessary for a surgical procedure listed by the State to be performed as an emergency, the need for a second opinion requirement would be waived. Similarly, if a State agency develops criteria for screening cases to determine whether second surgical opinions are necessary (e.g., diagnostic evidence of the patient's condition is such that approval may be given without the need for a second opinion), it may waive the requirement for cases which meet the criteria. This provision is intended to permit States to avoid unnecessary expenses in connection with the SSOP in cases where a screening process proves effective, as it has done in some existing programs. In addition, should the State determine that there is no qualified physician available to furnish a second opinion due to distance or specialty considerations, the requirement would be waived. The State would be free to establish areas where distance precludes obtaining a second opinion. In most instances we would not expect a Medicaid recipient to be required to travel more than the distance that the individual would normally be required to travel to receive medical services in his or her geographical area. Finally, Medicaid recipients enrolled in an HMO or competitive medical plan (CMP) having a risk-sharing contract under Medicaid would be exempt from the second opinion requirement because HMOs and CMPs generally reimbursed on a risk basis use other approaches which achieve the same results as a second opinion program. Any action resulting from the application of the State's review system which results in the denial of Medicaid payment, either prospectively or retrospectively, is subject to the usual hearings and appeal rights as cited under 42 CFR Part 431 Subpart E.

State programs would be required to notify all recipients and physicians, hospitals and ambulatory surgical facilities participating in the Medicaid program of the SSOP and its requirements, including the applicable list of surgical procedures to which such requirements apply, and furnish information about the mechanism for referring recipients for second opinions.

States that are currently operating review programs which HCFA determines achieve the objectives of cost effectiveness and preventing unnecessary surgery, as stated in these regulations, will not be required to follow the procedures in these regulations. For example, some States may achieve these objectives through their claims review process, or by reviewing on a prepayment basis requests for all or certain elective procedures. To the extent that the State's procedures achieve the objectives of these regulations, they may be exempt from these requirements.

States may submit a description of their review systems to HCFA for a determination as to whether they achieve the objectives of this regulation. Overall, HCFA's approval of an alternative program will be based on its evaluation as to whether the program is, at a minimum, equal to the outcomes to be achieved in an SSOP, based on the objectives set forth in these regulations. If HCFA determines that the existing system fails to meet the SSOP objectives, States will be given the option of either upgrading existing programs, or implementing an SSOP, if such an upgrading will meet the objectives of the regulations. Existing programs would have 90 days after the effective date of this regulation to come into compliance. Similarly, States not currently operating SSOP programs may substitute an alternative approach if HCFA finds that the proposed system will accomplish the same objectives.

HCFA may withdraw its approval of the alternative to a mandatory SSOP if it finds that the system is not satisfactorily accomplishing those purposes. In such cases, the State must institute this an SSOP within 90 days from the date the alternative plan was disapproved by HCFA.

In accordance with the President's budget for fiscal year 1987, we propose this regulation be effective October 1, 1986, but States would have 90 days after the effective date of publication of the final rule to come fully into compliance. This will allow States sufficient time to establish the mandatory second surgical opinion program, to upgrade an existing program, or to seek approval of an alternative plan or review program, and to advise all affected parties.

III. Provisions of the Proposed Regulations

We propose to add a new Subpart G to Part 431 of Title 42. This regulation, as mentioned above, would impose a Federal requirement that each State's Medicaid plan include a program for mandatory second surgical opinions for certain procedures.

Section 431.400 would be added to include the basis and scope for a mandatory second surgical opinion program and necessary definitions.

Section 431.401 would specify that the State plan must include the requirements of this subpart, or the State must include an approved alternative program.

Section 431.402 would require that the State's program apply to a selected list of ten, or more at State option, elective surgical procedures as outlined in the regulation text. The second opinion must, at a minimum, address the medical appropriateness of the proposed surgery. Federal financial participation (FFP) would be denied for elective surgical procedures specified by the State if the recipient did not obtain a second opinion (unless exceptions or waivers of the requirement were applicable).

Section 431.403 would outline the procedures for selecting elective surgeries for inclusion in the SSOP.

In § 431.404 we would specify the criteria for a State agency to consider when establishing procedures for SSOPs.

Section 431.405 would require that an agency notify all Medicaid recipients of the requirements of the Second Surgical Opinion program.

Section 431.406 would require that an agency notify all physicians, hospitals and facilities participating in the Medicaid program which provide services subject to the second opinion reequirements.

IV. Regulatory Impact Statement and Regulatory Flexibility Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet 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 government agencies, or any geographical 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.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. States are not included in the definition of small entity under the RFA. In addition, since they are individuals, Medicaid recipients are not considered small entities under the RFA. However, hospitals, ambulatory surgical centers and physicians, which would be affected by this proposed rule, are considered small entities.

This proposed rule would not meet the criteria for a major rule under E.O. 12291. Although we do not expect many physicians, hospitals, or ambulatory surgical centers would experience substantial loss of revenue as a result of a mandatory SSOP, the changes in behavior associated with the "sentinel effect", the required provision of information to patients and making referrals for second opinions, may be considered significant. Therefore, we have prepared a voluntary regulatory flexibility analysis.

B. Estimated Program Savings

Based on the data currently available to us, this regulation is expected to save between $20 and $70 million annually in Medicaid program expenditures for Federal and State governments, combined, by making it mandatory to require second surgical opinions for selected elective surgical procedures.

ESTIMATED ANNUAL SAVINGS OF MEDICAID MANDATORY SSOP (MEDICAL ASSISTANT PAYMENT)

[Rounded to nearest $5 million]

Federal	$10 to $40 million.
State	$10 to $30 million.
Total	$20 to $70 million.

The wide range of potential savings is related to the options available to States. Our estimate of savings is based on the difference between the cost of surgery and the combined cost of a second physician consultation and any alternative treatment that may be required, and takes into account that there would be additional program costs associated with obtaining second opinions. However, some aspects of costs and savings were too difficult to quantify. For example, some savings would be associated with the avoidance of the costs of ancillary services associated with surgical procedures not performed, and some offsetting costs could result from alternative treatment furnished instead of surgery. First year savings would be somewhat less than eventual full annual savings because of the delays necessary for States to amend their State plans and implement programs, and lags in reimbursement claims. In addition, program savings would be offset by administrative costs

for the States, of which the Federal Government would bear a share.

C. Discussion

There are currrently ten States with mandatory second surgical opinion programs. Three States have reported $1 million in savings annually as a result of their mandatory programs. The surgery rates have declined in these States attributable both to a direct effect on patients referred to the SSOP and to a "sentinel effect"; that is, that physicians recommended fewer surgeries.

Physician behavior could be affected in several ways by this proposed rule. The physicians who recommend and perform surgical procedures may prescribe surgery less frequently. To the extent that surgeons perform fewer surgeries as a preferred form of treatment, whether as a result of this "sentinel" effect, or as a result of patient election to avoid surgery, physician income could be reduced. However, there would be an increase in the number of referrals and consultations as a result of this proposed rule. The cost of these physicians' services would, to some extent, offset savings attributable to reduced surgical costs, and in the case of individual physicians who provide second or third opinions, also might offset in part any income reduction attributable to a reduction in the number of surgeries performed. Certain physicians might experience an increased consultation workload, with a concomitant increase in income, when they agree to participate in the State programs.

Physicians and facilities would have to assure that each recipient was informed of the need for a second opinion and obtained it in order to have the procedure ultimately paid for by the Medicaid program. This could place additional administrative burdens on the physician, the facility at which surgery would occur, and the State Medicaid agency, to ensure that preparation of a second opinion was confirmed prior to performance of surgery.

Hospitals and ambulatory surgical centers could be affected by lesser volumes of elective surgery. Delays in admissions could occur because the patients would be involved in setting up appointments for second or third opinions.

We expect this proposal would enhance quality of services among health care providers and practitioners by avoiding unnecessary surgery. Further, since surgery is relatively resource-intensive compared to alternative treatment modalities, avoidance of unnecessary surgery would be expected to improve overall system productivity, since some resources would presumably be redistributed more effectively.

The SSOP would benefit Medicaid recipients by giving them a more active part in the decision of whether to undergo surgery that might not be in their best interest. Costsharing requirements would be waived for the second or third opinion or for related diagnostic services. Further, Medicaid recipients would be better informed and more aware of alternatives to surgery. As a consequence of obtaining a second opinion, the elective procedures performed would be based on informed decisions by recipients more aware of the surgery to be performed and alternative treatment to replace the surgery.

If a recipient were to elect not to get a second opinion, or if coverage were denied under a State utilization control program as a result of a negative second opinion, his or her costs for subsequent surgery could increase because the burden of paying for the resulting surgery and attendant services would not be borne by the Medicaid program. This could also increase costs for the physician and provider if the recipient were unable to pay for the surgery. However, we expect recipients would rarely choose surgery without obtaining a second opinion, since, in the case of a recipient electing to have surgery, the financial interests of recipient, physician, and provider would all be served by obtaining the second opinion.

V. Reporting and Recordkeeping Requirements

Sections 431.401, 431.404 (a), (b), (c), (e), and (g), 431.405 and 431.406 of this proposed rule contain information collection requirements that are subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980. A notice will be published in the **Federal Register** when approval is obtained. Other organizations and individuals desiring to submit comments on the information and collection requirements should follow the directions in the ADDRESS section of this preamble.

VI. Response to Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to the issues in the preamble to that rule.

List of Subjects in 42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 431 would be amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The table of contents is amended by adding a new Subpart G to Part 431 and reserving Subpart H–L to read as follows:

Subpart G—Mandatory Second Surgical Opinion Program Under Medicaid

Sec.
431.400 Basis, scope and definitions.
431.401 State plan requirements.
431.402 Application of second surgical opinions.
431.403 Covered elective surgical procedures.
431.404 Procedures for SSOPs.
431.405 Notfication to recipients.
431.406 Notification to physicians, hospitals and ambulatory surgical facilities.

Subparts H–L—[Reserved]

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. A new Subpart G is added to read as follows:

Subpart G—Mandatory Second Surgical Opinion Program Under Medicaid

§ 431.400 Basis, scope and definitions.

(a) *Basis.* This subpart is based on section 1902(a)(30)(A) of the Act which requires that State plans contain safeguards against unnecessary utilization of care and services and assure that payments are consistent with efficency, economy and quality of care. This subpart is also based on section 1902(a)(4) of the Act which provides that States plans shall include administrative methods necessary for proper and efficient operations of the plan.

(b) *Scope.* This subpart establishes general requirements for a mandatory second surgical opinion program (SSOP) or approved alternative program under Medicaid for each State as a State plan requirement. The objectives of the SSOP are to prevent unnecessary surgery and be cost-effective. State plans must provide that unless certain exceptions apply, a recipient must obtain an independent evaluation of the need for surgery for specified elective surgeries prior to their performance, as a condition for Medicaid payment.

(c) *Definitions.* As used in this part: "Elective surgery" means a surgical procedure which can be scheduled in

advance, (i.e., not an emergency procedure), and one which is discretionary on the part of both physician and patient. Failure to undergo elective surgery does not pose a mortality threat to the patient, and scientific evidence does not indicate clearly greater life expectancy if the surgery is elected.

"Emergency surgery" is characterized by urgent need for performance; is surgery performed for conditions and circumstances which afford no choice of alternatives either to the physician or to the recipient as to performance or non-performance; or is surgery which if delayed, could reasonably result in death or permanent impairment of health.

"First opinion" means the medical judgment by a physician qualified to evaluate the patient's condition that the procedure is medically appropriate.

"Review program" means a systematic plan for utilization review to determine whether a second surgical opinion should be obtained for selected elective surgical procedures furnished to Medicaid recipients. The plan must provide for review of each case for elective surgical procedures which applies to inpatient services of a hospital or outpatient services.

"Second opinion" means an additional surgical or medical evaluation of a recommendation for elective surgery given by a physician in active practice qualified to evaluate the patient's condition.

"Second surgical opinion program (SSOP)" means a State program under which Medicaid recipients may be required to obtain an additional physician consultation as a condition of Medicaid payment for the surgery and related services.

§ 1431.401 State plan requirements.

(a) A State plan must include the requirements of §§ 431.402 through 431.406, or the State must have in place a system for reviewing the need for surgical procedures which HCFA determines achieves the objectives of these provisions.

(b) A State plan must specify implementing details concerning the SSOP, consistent with requirements of this subpart.

§ 1431.402 Application of second surgical opinions.

(a) *General rule.* Federal financial participation (FFP) is not available for those elective surgical procedures specified by the State if the recipient did not obtain a second opinion, unless exceptions or waivers of the requirement were applicable as stated in paragraph (b) of this section. For those elective surgical procedures specified by the State in accordance with § 431.403 of this subpart, but in no case fewer than ten such procedures, a second surgical opinion must—

(1) Be obtained from a physician that meets the qualifications of § 431.404; and

(2) Address the medical appropriateness of the proposed surgery as the preferred mode of treatment.

(b) *Exceptions.* The recipient is not required to obtain a second surgical opinion with respect to procedures subject to paragraph (a) of this section if—

(1) The State's procedures provide for screening of proposed surgical procedures to determine whether the diagnostic evidence of the patient's condition is such that approval may be given without the need for a second opinion;

(2) The recipient is enrolled in a HMO or prepaid health plan having a risk-sharing contract with the State Medicaid agency;

(3) The procedure, although generally elective, is being performed as an emergency procedure as defined in § 431.400;

(4) The State agency determines there is no qualified physician available to give a second opinion due to considerations of distance or physician specialty.

§ 1431.403 Covered elective surgical procedures.

In selecting elective procedures for inclusion in its SSOP, the State agency must consider both outpatient and inpatient procedures and determine whether the procedure—

(a) Is one that can generally be postponed without creating an undue risk to the recipient;

(b) Is costly or is frequently performed for Medicaid recipients; and

(c) Is among those found to be of questionable medical necessity based upon reputable data or medical literature available to the State agency.

§ 431.404 Procedures for SSOPs.

(a) The State agency must establish procedures under which recipients are required to obtain a second surgical opinion prior to undergoing surgery for certain elective surgery. A State may, at its option, also provide for obtaining a third opinion to confirm either the initial or second opinion.

(b) The agency must provide information and assistance to the recipients which would include, as a minimum.—

(1) A list of physicians determined by the State agency to be qualified to provide second opinions and who have agreed to do so or other direct referral mechanism established by the agency for this purpose; and

(2) Information about how to retrieve pertinent medical records from the physician who provided the first opinion (or, if necessary, from the hospital or surgical facility) and make available the necessary information to the physician being asked to provide the second opinion or other State established mechanism for this purpose.

(c) The State agency must analyze SSOP data (including cost data) and update, if necessary, the list of elective procedures at least once a year. The State must agree to provide such information to the Secretary of his designee upon request.

(d) The State agency may not impose a cost sharing requirement on a recipient for such a second (or, at State option where the two opinions disagree, a third) opinion, nor for necessary diagnostic services covered under the State plan which are required for preparation of the second or third opinion.

(e) The State agency must designate, for each surgical procedure on the list for which a second opinion is required, those specialties and qualifications of those physicians who would be consulted for a second opinion. The State agency requirements must assure that no conflict of interest exists between the first opinion physician and physicians providing a second or third opinion.

(f) A State must have its SSOP implemented within 90 days after the effective date of this regulation.

(g) A State with an alternative SSOP plan or an existing review program that prevents unnecessary surgery and is cost effective must obtain HCFA's approval of its program. The agency must submit the appropriate information to make this determination to HCFA within 30 days of the effective date of this regulation.

(h) A State with an alternative SSOP plan that does not meet HCFA's approval or with an existing review program that does not meet HCFA's approval must upgrade its system to meet HCFA's approval or implement these SSOP requirements within 90 days from the date the alternative plan or review program was disapproved.

§ 431.405 Notification to recipients.

The State agency must notify all recipients of the SSOP and its requirements, including the applicable

list of surgical procedures to which such requirements apply, exceptions, and general information about the referral services.

§ 431.406 Notification to physicians, hospitals and ambulatory surgical facilities.

The State agency must notify all physicians, hospitals and ambulatory surgical facilities which provide services subject to the SSOP and are participating in the Medicaid program of the requirements of the SSOP. The notice must also include the applicable list of surgical procedures to which the requirements apply.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: May 19, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: May 27, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-13666 Filed 6-16-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-91; Notice 1]

Interval for Review and Calculation of Relief Device Capacity

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to permit calculations made to verify capacity of relieving devices to be performed on the same interval (not to exceed 15 months, but at least once each calendar year) as required if capacity tests are actually performed. The present interval, "one-year," causes inconvenience in scheduling and possibly added inspection costs with no greater safety benefits than the interval proposed here.

DATE: Interested persons are invited to submit written comments on this proposal by August 18, 1986. Late filed comments will be considered to the extent practicable.

ADDRESS: Comments should identify the docket and notice numbers and be submitted in triplicate to the Dockets Branch, Room 8426, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 426-3148. All comments and other docket material are available in Room 8426 for inspection and copying between the hours of 8:30 a.m. and 5:00 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: Paul J. Cory, (202) 426-2082. Copies of the proposal and documents related thereto may be obtained from the Dockets Branch, (202) 426-3148.

SUPPLEMENTARY INFORMATION:

Background

The inspections and tests required by §§ 192.739 and 192.743(a) of relieving devices as well as other equipment must be conducted "at intervals not to exceed 15 months, but at least once each calendar year." The inspections and tests are to determine that the equipment is in good mechanical condition, has adequate capacity, is reliable, has a correct set pressure and is properly installed and protected. A companion rule, § 192.743(b), permits operators to substitute "review and calculation of required capacity" when an actual test of capacity is not feasible. This review and calculation must be made "at intervals not exceeding one-year."

The difference between the inspection and test interval in §§ 192.739 and 192.743(a) and the "one year" period under § 192.743(b) if forcing pipeline operators to set different schedules for the inspections and tests of relieving devices versus review and calculation, which may increase costs and is inconvenient. Further, although actual testing is preferred, the objective of each of these rules, assuring adequate capacity, is the same. There is no safety justification for requiring the calculation of capacity under § 192.743(b) on a schedule that is different, not necessarily more frequent, than the schedule for tests and inspections under §§ 192.739 and 192.743(a).

On November 18, 1985, the Gas Piping Technology Committee of the American Society of Mechanical Engineers petitioned RSPA to amend § 192.743(b) to permit the review and calculation of relieving device capacity to be made at the same interval permitted for the testing of relieving devices under § 192.743(a). (Petition No. P-31).

In view of the undue burden and potentially added costs of scheduling the tests and inspections of relieving devices under §§ 192.739 and 192.743(a) on a different basis from the alternative review and calculation under § 192.743(b), RSPA is proposing to amend § 192.743(b) to permit the review and calculation to be made "at intervals not to exceed 15 months, but at least once each calendar year."

It should be noted that under the existing and proposed versions § 192.743(b), calculation of capacity need not be repeated if the review documents that the parameters used in the previous calculation have not changed to make existing capacity inadequate.

Classification

Since this proposed rule will have a positive effect on the economy of less that $100 million a year, will result in cost savings to consumers, industry, and government agencies, and no adverse impacts are anticipated the proposed rule is not "major" under Executive Order 12991. Also, it is not "significant" under Department of Transportation procedures (44 FR 11034). RSPA believes that the proposed rule will reduce the costs and inconvenience of scheduling the inspections and tests of relief values under § 192.43. However, this savings is not expected to be large enough to warrant preparation of a Draft Regulatory Evaluation.

Based on the facts available concerning the imapct of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not, if adopted as final, have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Relieving devises, Inspections, Testing.

PART 192—[AMENDED]

In view of the above, RSPA, proposes to amend Part 192 ot Title 49 of the Code of Federal Regulations as follows:

1. The authority citation for Part 192 continues to read as set forth below:

Authority: 49 U.S.C. 1672; U.S.C. 1804; 49 CFR 1.53 and Appendix A of Part L.

2. Section 192.743(b) would be revised to read as follows:

§ 192.743 Pressure limiting and regulating stations: Testing of relief devices.

* * * * *

(b) If a test is not feasible, review and calculation of the required capacity of the relieving device at each station must be made, at intervals not exceeding 15 months, but at least once each calendar year, and these required capacities compared with the rated or experimentally determined relieving capacity of the device for the operating conditions under which it works.

* * * * *

Issued in Washington, DC, on June 12, 1986, under authority delegated by CFR Part 106, Appendix A.

Robert L. Paullin,

Director, Office of Pipeline Safety.

[FR Doc. 86-13670 Filed 6-16-86; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 51, No. 116
Tuesday, June 17, 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.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Temporary Program to Encourage Use of Grain for Fuel Ethanol

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: On MAy 2, 1986, the Secretary of Agriculture announced a temporary program to encourage the use of grain in the production of fuel ethanol. Under the program, the Commodity Credit Corporation (CCC) will enter into agreements with eligible ethanol producers who (1) acquire grain in the market and (2) convert the grain into fuel ethanol between May 10 and September 30, 1986. Under the agreements, CCC will issue Commodity Certificates (Certificates) to ethanol producers as provided in an Announcement and Offer to provide program benefits to eligible producers.

FOR FURTHER INFORMATION CONTACT: Ronald K. Burgess, Deputy Director, Commodity Operations Division, Agricultural Stabilization and Conservation Service (ASCS), USDA, Washington, D.C. 20250 (202–447–4966).

SUPPLEMENTARY INFORMATION: Some facilities which use grain in the production of fuel ethanol have closed and others are threatened with imminent failure because of financial problems due to the decline in energy prices.

Section 423(a) of the Agricultural Act of 1949, as amended by section 1024 of the Food Security Act of 1985 Pub. L. 99–198) (the 1949 Act), authorizes CCC to provide CCC-owned stocks of agricultural commodities at no cost or reduced cost to encourage the purchase of agricultural commodities for the production of liquid fuels. Section 423(a) provides that, insofar as possible, any such action should not displace usual marketing of agricultural commodities.

In order to encourage facilities which use grain in the production of fuel ethanol to continue in operation, thereby removing surplus grain from the market, CCC, in accordance with the 1949 Act and the Commodity Credit Corporation Charter Act, will make an offer to issue Certificates to eligible ethanol producers who remove grain from the market and subsequently convert the grain into fuel ethanol during the period of May 10 to September 30, 1986 (the processing period). Generally, for every 2.5 bushels of grain that is acquired in the market and then converted to ethanol during the processing period, producers will receive Certificates equivalent to the market value, as determined by CCC, of one bushel of CCC-owned grain.

In 1985, the domestic fuel ethanol industry converted approximately 250 millon bushels of U.S. grain into ethanol.

To the extent that the program is successful in permitting the fuel ethanol facilities to continue in operation, long-term commercial demand for grain will be maintained. No significant negative price effects are expected in domestic grain markets as a result of the program.

Notice of Program Availability

In general, the program to encourage the use of grain in the production of fuel ethanol will work as follows:

A. Only ethanol producers in the 50 states of the United States and the District of Columbia may qualify under the program. In order to be eligible to enter into an agreement to participate in the program, an ethanol producer must meet two criteria. First, the producer must have authority from the Bureau of Alcohol, Tobacco and Firearms (BATF) of the Department of the Treasury to produce fuel ethanol and must submit (1) a copy of the Alcohol Fuel Producers Permit (AFT F 5110.74) *or* (2) copies of the Registration of Distilled Spirits Plant (ATF F 5110.41) and Operating Permit (ATF F 5110.23). Second, the producer must have produced ethanol for fuel use from any feedstock during March or April 1986 and must submit evidence, acceptable to CCC, of such production. Supporting documents should include copies of (1) records of feedstock acquisitions since February 15, 1986; (2) ethanol sales transactions since March 1, 1986 showing dates, quantity, and purchaser for each transaction; (3) payroll records showing pay and hours by class of employee for pay periods covering the March 1—April 30, 1986 period; (4) BATF Alcohol Fuel Plant Report (ATF F 5110.75), *or* Monthly Report of Processing (Denaturing) Operations (ATF F 5110.43) and Monthly Report of Production Operations (ATF F 5110.40), covering the March 1 through April 30, 1986 period. Other relevant documents, such as production reports filed with State agencies, may be submitted or required by CCC, as evidence to qualify for participation in the program.

B. Relevant documents should be sent to: Director, Commodity Operations Division, ASCS/USDA, P.O. Box 2415, Washington, D.C. 20013. Producers will be notified in writing of eligibility or ineligibility for program participation, or if additional information is needed. Upon notification of approval to participate in the program, eligible producers will receive a copy of CCC's Announcement and Offer describing the terms and conditions of the agreement for participation in the program which must be entered into by CCC and the eligible producer.

C. An eligible producer may accept CCC's offer by presenting evidence of grain acquisitions and ethanol production, as provided for in CCC's Announcement and Offer.

D. Producers of hydrous ethanol may qualify for the program and must submit documentation, acceptable to CCC, that the hydrous ethanol they produced from grain during the processing period was subquently distilled and denatured for fuel use. Distillers may receive Certificates only with respect to grain used in the production of fuel ethanol in their facilities during the processing period.

E. Producers who used nongrain feedstocks during the qualifying period of March and April 1986 may be eligible for the program but will receive Certificates only with respect to grain converted to fuel ethanol during the processing period.

F. In accordance with CCC's Announcement and Officer, CCC will issue Certificates to eligible producers who submit evidence acceptable to CCC of grain acquisitions and the conversion of the grain to ethanol during the processing period. The monetary denomination of the inital Certificates issued by CCC under the program will be determined by multiplying 40 percent times the number of bushels acquired in

the market and converted to ethanol times the per-bushel value established by the CCC for the kind or kinds of grain converted by the producer. In computing the monetary denomination of subsequent Certificates issued by CCC under the program, CCC will subtract the face value of Certificates issued for the previous month's conversion of grain to ethanol.

G. The per unit value used by CCC to determine the monetary denomination of the Certificates will be based upon terminal market prices established daily by the Kansas City Commodity Office, ASCS. These prices will be adjusted by the county average differential in the county in which the ethanol facility is located. County average differentials are used by CCC in determining the monetary amount of Certificates issued to producers under the commodity price support and production adjustment programs.

H. Certificates will expire on the last day of the sixth month following the month of issuance. Certificates will be generic, i.e., they may be exchanged for any CCC-owned commodity made available for exchange by CCC, unless otherwise determined by CCC. Certificates may be transferred or exchanged in accordance with 7 CFR Part 770 and the "Procedure for Exchanging Commodity Certificates for Commodity Credit Corporation-Owned Commodities" (Short Reference KC–ECC–1).

I. Grain acquired by exchange of a Certificate or purchased with the proceeds of a Certificate will not qualify a producer for subsequent Certificates.

J. Grain removed from the market must have been converted into fuel ethanol by September 30, 1986 in order for producers to earn Certificates with respect to such grain. CCC's offer will expire on October 31, 1986.

K. Where the terms of the Announcement and Offer or any amendments thereto issued by CCC pursuant to this Notice differ from the terms of this Notice, the terms of the Announcement and Offer shall prevail.

L. CCC is requried to report to the Internal Revenue Service the monetary amount of payments made by Certificates to eligible producers. Such payments will be reported for the calendar year in which the Certificates are issued.

CCC invites the public to comment on these program procedures and to propose alternate procedures at any time during the course of the program.

ADDRESS: Comments and requests to receive copies of CCC's Announcement and Offer should be submitted in writing to Director, Commodity Operations Division, ASCS/USDA, P.O. Box 2415, Washington, D.C. 20013.

Signed at Washington, DC, on June 4, 1986.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 86-13605 Filed 6-16-86; 8:45 am]

BILLING CODE 3410-05-M

Loan and Purchase Programs; 1986-Crop Peanut Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Proposed determination—1986 crop peanut price support differentials for warehouse and farm-stored loan and purchase program.

SUMMARY: This notice sets forth proposed adjustments to the price support loan and purchase rates for the 1986-crop of quota and additional peanuts for differences in peanut type, quality, location and other factors. Such adjustments apply to the warehouse-stored loan price support operations and farm-stored price support operations and are authorized by Section 403 of the Agricultural Act of 1949 (the "1949 Act").

EFFECTIVE DATE: Comments must be received on or before July 2, 1986 in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Solomon J. Whitfield, Tobacco and Peanuts Division, ASCS, USDA, Room 5727 South Building, P.O. Box 2415, Washington, DC. 20013, (202) 447-5754. A Preliminary Impact Analysis describing options considered in developing this proposed determination and the impact of implementing such options is available upon request from Mr. Whitfield.

SUPPLEMENTARY INFORMATION: This notice of proposed determination has been reviewed under USDA procedures in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major". It has been determined that this proposed determination will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this proposed determination applies: Commodity Loans and Purchases, 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 of proposed determination since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

In order to allow for adequate review of the comments and for the publication of a final determination prior to the beginning of the peanut harvest period, it has been determined that the comment period will be limited to 15 days.

On the basis of an environmental evaluation, it has been determined that this action will have no significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitats, water quality, air quality, and land use and appearance. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order No. 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).

In accordance with section 108 B of the 1949 Act, as added by section 705 of the Food Security Act of 1985, average price support levels are announced by the Secretary of Agriculture for each crop year for quota and additional peanuts. Quota peanuts are peanuts which are marketed or considered marketed from a farm for domestic edible use. This includes all peanuts which are dug on a farm except for the following: (1) Green peanuts; (2) peanuts which are pledged as loan collateral at the level of price support for additional peanuts and not redeemed by the producer; and (3) peanuts which are marketed under a contract between a handler and a producer for exportation and/or crushing. Additional peanuts are any peanuts which are marketed from a farm other than peanuts which are marketed or considered to be marketed as quota peanuts. Section 403 of the 1949 Act provides that adjustments may be

made in support levels for a commodity for differences in type, quality, location and other factors. Section 403 further provides that such adjustments shall, so far as practicable, be made in such manner that the average level of support will, on the basis of the anticipated incidence of such factors, be equal to the level of support announced by the Secretary of Agriculture for the crop year involved. The regulations governing price support for peanuts are set forth at 7 CFR Part 1446.

A ton farmers stock peanuts will normally include a proportion of high quality edible peanuts referred to as sound mature kernels (SMK) and sound splits (SS), as well as quantities of lower quality loose shelled kernels (LSK), other kernels (OK) and damaged kernels (DK). Under the differentials applicable to the 1985 and preceding crop years, the value of any ton of farmers stock peanuts has been determined on the basis of the quantity and mix of these kernel values, plus a premium for extra large kernels (ELK) in the case of Virginia-type peanuts, and discounts for such factors as excess foreign material, split kernels and damaged kernels.

The 1985-crop differentials were derived by: (1) Setting the SMK value of Virginia-type peanuts at 2 percent above the SMK value of Runner-type peanuts, and (2) setting the SMK value of Spanish-type peanuts at ½ percent above the SMK value of Runner-type peanuts. The Valencia SMK value was not established as a percentage of any other SMK value. Under the proposed determination, it is proposed that these relationships not be changed for the purpose of determining differentials for the 1986–crop and that the other premiums and discounts which were applicable to the 1985-crop shall also remain unchanged for the 1986-crop, except that the minimum support value for any quota lot of eligible peanuts of any type would decrease from 8 to 7 cents per pound of kernels in the lot so that the minimum level does not exceed the support level for LSKs.

To estimate the expected incidence of quality factors, CCC customarily uses a five-year average from the immediately preceding crop years. For all types except Virginia-type peanuts, it is proposed that the 1986-crop differentials be calculated on the same basis. However, for Virginia-type peanuts, it is proposed that a four-year average (1981, 1982, 1984 and 1985) be used to project the expected incidence of all quality factors because abnormal weather in 1983 produced low quality Virginia-type peanuts including a low ELK yield.

The schedule of adjustments, basic support rates, and discounts would apply to both warehouse-store priced support loans and farm-stored price support loans and purchases.

The proposed schedule is based on a minimum national average quota price support level for 1986–crop peanuts of $607.14 per short ton. That level of support was announced by the Secretary on February 14, 1986.

As with the 1985–crop, it is proposed that the value of additional peanuts for price support purposes be calculated by using a two-step process. The first step is to calculate the level at which the peanuts would be supported if the particular peanuts involved were quota peanuts. That figure is then reduced by the factor (.2465) equal to the ratio of the announced national average support level for additional peanuts for the 1986-crop to the announced national average support level for quota peanuts for the 1986-crop.

Comments on all aspects of the differentials are solicited. Particularly desired are comments concerning: (1) Whether the ELK premium for Virginia-type peanuts should be reduced; (2) whether SMK pricing relationships should be changed among types; and (3) whether the excess moisture level should be uniform for all areas at 7 percent, uniform at a different level, or non-uniform (e.g., as with the 1983-crop for the excess moisture level was 8 percent for the Virginia-Carolina area and 7 percent elsewhere).

Proposed Determination

Accordingly, CCC hereby proposes that the price support differentials for the 1986-Crop Peanut Warehouse and Farm-Stored Loan and Purchase Program shall be as follows:

(a) *Average 1986 Support Values by Type Per Average Grade Ton of Peanuts.*

Type	Per average grade ton
(1) Support Value for Warehouse-Stored Loans:	
Virginia	$608.72
Runner	610.93
Spanish	579.85
Valencia:	
Southwest area-suitable for cleaning and roasting	608.72
Southwest area-not suitable for cleaning and roasting	579.85
Areas other than Southwest	579.85
(2) Support Value for Farm-Stored Loans:	
Virginia	609
Runner	611
Spanish	580
Valencia:	
Southeast Area	609
Areas Other Than Southwest	580

(b) *Calculation of Support Prices for Quota Peanuts.*

The support price per ton for 1986-crop quota peanuts of a particular type and quality shall be calculated on the basis of the following rates, premiums, and discounts (with no value assigned to damaged kernels (DKs)), except that the minimum support value for any quota lot of eligible peanuts of any type shall be 7 cents per pound of kernels in the lot:

(1) *Kernel Value Per Ton Excluding Loose Shelled Kernels (LSKs).*

(i) The price per ton for each percent of sound mature (SM) and sound split (SS) kernels shall be:

Type	Per per-cent
Virginia	$8.775
Runner	8.603
Spanish	8.646
Valencia:	
Southwest area-suitable for cleaning and roasting	9.050
Southwest area-not suitable for cleaning and roasting	8.646
Areas other than Southwest	8.646

(ii) The price per ton for each percent of other kernels shall be: All types, per percent, $1.40.

(iii) The premium per ton for each percent of Extra Large Kernels (ELKs) for Virginia-type peanuts shall be: $0.35. However, no premium for ELKs shall be applicable to any ton of such peanuts containing more than four-percent DKs.

(2) *Price of LSKs Per Pound.* The price for each pound of LSKs shall be: All types, per pound, $0.07.

(3) *Foreign Material Discount.* For all types of peanuts, the discount per ton for foreign material shall be as follows:

Percent	Discount
0–4	$0
5	1.00
6	2.00
7	3.00
8	4.00
9	5.00
10	6.00
11	7.00
12	8.50
13	10.00
14	11.50
15	13.00
16 and over	(1)

[1] For each full percent in excess of 15 percent deduct an additional $2.

(4) *SS Kernel Discount.* For all types of peanuts, the discount per ton for SS kernels shall be as follows:

Percent	Discount
1 through 4	$0
5	1.00
6	1.60
7 and over	(1)

[1] For each full percent in excess of 6 percent deduct an additional $0.80.

(5) *DK Discount.*

(i) For all types of peanuts, the discount per ton for DKs shall be as follows:

Percent	Discount
1	$0
2	3.40
3	7.00
4	11.00
5	25.00
6	40.00
7	60.00
8 to 9	80.00
10 and over	100.00

(ii) Notwithstanding the above discount schedule, the DK discount for Segregation 2 peanuts transferred from additional to quota loan pools shall not exceed $25 per ton.

(6) *Price Support Adjustment for Peanuts Sampled with Other Than Pneumatic Sampler.* The support price per ton for Virginia-type peanuts sampled with other than a pneumatic sampler shall be reduced by $0.10 per every percentage point of SM and SS kernels.

(7) *Mixed Type Discount.* Individual lots of farmers stock peanuts containing mixtures of two or more types in which there is less than 90 percent of any one type will be supported at a price which is $10 per ton less than the support price available to the type in the mixture having the lowest support price.

(8) *Location Adjustment.*

(i) Farmers stock peanuts delivered to the association for a warehouse-stored loan in order to receive price support advances in the States specified below, where peanuts are not customarily shelled or crushed, shall be discounted as follows:

State	Per ton
Arizona	$25.00
Arkansas	10.00
California	33.00
Louisiana	7.00
Mississippi	10.00
Missouri	10.00
Tennessee	25.00

(ii) Farmers stock peanuts pledged as collateral for a farm-stored loan in order to receive price support advances in the States where peanuts are not customarily shelled or crushed shall be discounted as follows:

(A) In States specified in Paragraph (8)(i), the peanuts shall be discounted as specified therein.

(B) In Puerto Rico and all other States, territories and possessions of the United States (excluding the States specified in Paragraph (8)(i) and Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas and Virginia), the peanut shall be discounted at $40.00 per ton.

(9) *Virginia-Type Peanuts.* Virginia-type peanuts, in order to be eligible for price support as Virginia-type, must contain 40 percent or more "fancy" size peanuts, as determined by a presizer with the rollers set at 34/64 inch space. Virginia-type peanuts so determined to contain less than 40 percent "fancy" size peanuts will be supported (but not classed) as though they were Runner-type.

(10) *Discount for Aspergillus Flavus Mold (Segregation 3 Peanuts).* There will be no discount applied to Segregation 3 peanuts for Aspergillus flavus mold when such peanuts are pledged as loan collateral at the additional loan rate. Should such peanuts later be transferred to a quota loan pool under the General Regulations Governing 1986 Through 1990-Crops Peanut Warehouse Storage Loans and Handler Operations set forth at 7 CFR Part 1446, they will be discounted at the rate of $25 per net ton from the level of price support application to the type of quota peanuts.

(c) *Calculation of Support Values for Additional Peanuts.* The support price per ton for 1986-corp additional peanuts of a particular type and quality shall be calculated on the basis of 24.65 percent of the same rates, premiums and discounts which are applicable to quota peanuts. This percentage was computed by dividing the national average price support loan rate per ton for 1986-crop additional peanuts by the national average price support loan rate per ton for 1986-crop quota peanuts.

Before making a final determination with respect to these matters, consideration will be given to any relevant data, views, recommendations or other comments which are submitted in writing within the comment period to the Director, Tobacco and Peanuts Division, ASCS–USDA, Room 5750-South Building, P.O. Box 2415, Washington, D.C. 20013. All written submissions made pursuant to this Notice will be made available for inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 5750-South Building.

Signed at Washington, DC, on June 12, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–13660 Filed 6–16–86; 8:45 am]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Request for Comments on Designation Applicants in the Ft. Smith-Van Buren, AR, Geographic Area (AR)

Correction

In FR Doc. 86–12172 appearing on page 19771 in the issue of Monday, June 2, 1986, in the second column, the **DATE** line should read as follows:

Comments to be postmarked on or before July 17, 1986.

BILLING CODE 1505-01-M

Request for Comments on Designation Applicants in the Battle Creek, Michigan, Geographic Area (MI)

Correction

In FR Doc. 86–12171 appearing on page 19771 in the issue of Monday, June 2, 1986, in the first column, the **DATE** caption should read as follows:

Comments to be postmarked on or before July 17, 1986.

BILLING CODE 1505-01-M

Forest Service

Vegetation Management Program Within the Pacific Northwest Region; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement for a proposed Vegetation Management Program within the Pacific Northwest Region for the entire States of Oregon and Washington, and minor portions of California and Idaho.

History

On June 2, 1981, the Forest Service issued a Final Environmental Impact Statement (FEIS) and Record of Decision on the Methods of Managing Competing Vegetation. The analysis included alternatives that provided for the use of different combinations of the methods considered appropriate in the Vegetation Management Program. The analysis also considered all vegetation management activities, excluding only timber harvest and tree nursery operations. The decision was made to implement Alternative 2—full use of all methods of vegetation management, except chemical use would be reduced. It was expected that a reduction in chemical use would be accomplished through consideration of local concerns and strict adherence to current law, regulation, policy, and guidelines.

A suit was filed in U.S. District Court for the District of Oregon on July 13, 1983, (Civil 83-6273-E). The plaintiffs were Northwest Coalition for Alternatives to Pesticides, Oregon Environmental Council, and Audubon Society of Portland. The defendants were J. R. Block, Secretary, United States Department of Agriculture; James Watt, Secretary, United States Department of Interior; and William Rucakelshaus, Administrator, Environmental Protection Agency. The Oregonians for Food and Shelter, Incorporated, were intervenors. The complaint cites seven claims for relief for plaintiffs.

A judgment was entered March 14, 1984, finding that, "The defendants have not prepared an adequate Worst Case Analysis, pursuant to their NEPA [National Environmental Policy Act] obligations under 40 CFR 1502.22." The defendants were enjoined from all spraying of herbicides within the United States Department of Agriculture, Forest Service Region 6, and within the United States Department of Interior, Bureau of Land Management (BLM) Districts, within the State of Oregon until completion of obligations under 40 CFR 150.22 (Incomplete or Unavailable Information). The Court made no findings on the remaining claims for relief and has maintained jurisdiction in the matter.

In response to the Court directive, the Forest Service, in a joint effort with BLM, subsequently prepared a comprehensive Human Health Risk Assessment for the Use of Herbicides, which included a Worst Case Analysis. This was intended to be issued as part of a Supplement to the existing FEIS as indicated in the Notice of Intent published in the **Federal Register**, June 4, 1985, (50 FR 107, page 23480). Since that time the Forest Service determined it appropriate to prepare a new EIS on the Vegetation Management Program within the Pacific Northwest Region and on May 16, 1986, a canellation of the Notice of Intent was published in the **Federal Register** (51 FR 95, page 18014).

The determination to prepare a new FIS was based on several factors:

1. The need to re-evaluate the standards and guidelines in the 1981 document.

2. The need to update the issues and NEPA format requirements.

3. The need to reexamine the management objectives for the entire Vegetation Management Program based on the current direction and philosophy.

4. The need to include the Human Health Risk Assessment, and worst-case analysis.

5. The need to consider the plaintiffs remaining claims for relief in the July 13, 1983, suit filed in U.S. District Court for District of Oregon.

Objectives

The analysis for the new EIS will consider a range of alternative Vegetative Management Programs. The alternative Program will identify the activities that will require vegetation management and the methods to be used during implementation. Methods under consideration will include chemical, mechanical, manual, biological, and thermal techniques. Activities that require vegetation management include plantation site preparation and conifer release, tree genetics activities, research, recreation facilities maintenance, range improvement and noxious weed control, wildlife habitat improvement, fire management activities, facilities maintenance, and right-of-way maintenance (roads, trails, utilities, and railroads.) These activities involve USDA Forest Service personnel, as well as numerous cooperators and agents.

Scoping

The scoping process will not inlcude formal hearings or public meetings; however, Federal, State, and local agencies, any affected Indian Tribe, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. The process will include:

1. Defining the scope of the analysis and nature of decisions to be made.

2. Identifying the Regional and local issues and determining those issues ripe for consideration and analysis within the EIS for the Vegetative Management Program.

3. Defining the proper interdisciplinary team makeup.

4. Determining effective use of time and money in conducting the analysis.

5. Focusing on social issues, as well as technical and biological issues.

6. Identifying potential cooperating agencies.

7. Identifying groups or individuals interested or affected by the decision.

Schedule and Responsible Official

James F. Torrence, Regional Forester, Pacific Northwest Region, is the responsible official.

The analysis is expected to take about 15 months. The draft statement should be available for public review by March 1987. The final statement is scheduled to be completed by August 1987.

Written comments concerning the analysis, as well as questions about the proposed action and EIS, should be directed to Gary L. Larsen, Forest Pest Management, USDA Forest Service, P.O. Box 3623, Portland, Oregon 97208, Phone (503) 221-2727.

Dated: June 11, 1986.

Richard A. Ferraro,

Acting Regional Forester.

[FR Doc. 86-13616 Filed 6-16-86; 8:45 am]

BILLING CODE 3410-11-M

National Agricultural Statistics Service

Survey Program Modifications

The Department of Agriculture, National Agricultural Statistics Service (formerly the Statistical Reporting Service), is proposing changes in its survey program for several major surveys. A quarterly probability agricultural survey program that combines data collection for cattle, hog, and sheep inventories with on-farm grain stocks, crop acreage, and end-of-season production data is planned. A major consideration in developing the modified survey program is to reduce the number of times farmers are contacted for survey information and improve quality of data they report. The combined data collection for these items will be more cost-efficient than the current approach of single surveys for each item. Additional benefits that will accrue with the change to the quarterly probability survey program are:

1. All livestock and grain stocks inventory information will be collected from farmers after the appropriate reference date which will improve its quality. Under the current survey system much of the data is collected well ahead of the reference date and can vary significantly if planned marketings or breedings are not carried out.

2. Crop harvested acreage and final production estimates will be based on a probability survey for the 48 conterminous States.

3. Fewer planting intentions will be reflected in the midyear planted acreage survey.

4. Cattle, hog, and sheep inventory information will be collected in a uniform 2-week major survey period following the reference date, rather than in two survey periods over a time span. This will reduce reporting errors which are considered a major factor in improving the reliability of official estimates.

5. Nearly all survey respondents will have some positive data to report in contrast to the relatively large number of farms without the specific item of

interest when single commodity surveys are used.

6. A preliminary summary of acreage, yield, and production for small grains will be available earlier than is presently possible.

7. Midyear cattle inventory and preliminary calf crop data at the *State level* would be provided.

Most aspects of the planned survey changes are in keeping with recommendations made by the Economic and Statistics Review Panel which reported to the Secretary of Agriculture in June 1985. In particular, quality improvements in data series, changes in the crops survey dates, midyear State level cattle inventory estimates, and implementation of full probability surveys were addressed by the Panel.

The new quarterly probability integrated survey approach has been tested over the past 2 years to determine proper questionnaire design and develop new sampling approaches which will maintain the present survey precision of probability livestock surveys. Final testing of questionnaires and survey timing is planned in June and December 1986.

The proposed quarterly probability survey program schedule will include surveys with reference dates of March 1, June 1, September 1, and December 1. The annual calf crop will be based on a December-November period. Lamb crop estimates will continue on the current October-September base with October and November lambs defined as "new crop." Data collection for each survey will start on the first of the month and run through about the 15th of the month. The first reports from the surveys will be available by the end of the month. The table below shows the major items of interest to be collected on each quarterly survey and the planned release dates.

TABLE 1.—PROPOSED INTEGRATED SURVEY PROGRAM WITH MAJOR ITEMS TO BE COLLECTED EACH SURVEY—1987

Survey reference date[1]	Survey information to be collected	Proposed release dates for 1987–88
March 1	Hogs and pigs inventory	Mar. 30, 1987.
	On-farm grain stocks	Do.
	Acreage intentions	Do.
June 1	Hogs and pigs inventory	June 29, 1987.
	On-farm grain stocks	Do.
	Planted acreage	July 9, 1987.
	Midyear cattle inventory	Do.
September 1	Hogs and pigs inventory	Sept. 29, 1987.
	On-farm grain stocks	Do.
	Small grain annual summary.	Oct. 9, 1987.
December 1	Hog and pigs inventory	Jan. 5, 1988.
	On-farm grain stocks	Jan. 14, 1988.
	Crops annual summary	Do.
	Cattle inventory	Jan. 15, 1988.
	Sheep inventory	Jan. 12, 1988.
	Winter wheat seedings	Jan. 14, 1988.

[1] Data collection will be scheduled for the first 15 days of each month.

While the proposal above is an optimum approach to minimize survey costs and reporting burden to respondents, the Agency has considered an alternative to address concerns raised by cattle and sheep industry contracts about shifting to the new December 1 reference date.

An alternative survey plan for maintaining January 1 reference dates for cattle and sheep is to collect the basic data for these commodities as of December 1 with the major agricultural survey during December 1–15 period. An additional survey of cattle and sheep operators would be made during the January 1–15 period to update the December 1 data to a January 1 basis. The calendar year calf crop and new crop lambs would be estimated by collecting data for December births in the follow-on survey. This approach emphasizes the survey reference date as of January 1. All the midyear cattle inventory and calf crop estimates would be eliminated and the funds allocated for that report would be used to support the additional January survey requirements.

Release dates for January 1, 1988, inventory estimates would be:

Sheep Inventory and Lamb Crop—January 29, 1988.

Cattle Inventory and Calf Crop—February 2, 1988.

Comments and questions on the proposed new survey schedule are invited. In order to be considered in time to set the Agricultural Statistics Board Release Calendar for 1987, submissions must be received by July 14, 1986. Comments should be sent to Richard D. Allen, Director, Estimates Division, NASS/USDA, Room 5847–S, Washington, D.C. 20250.

Done at Washington, DC, this 12th day of June 1986.

W.E. Kibler,

Administrator.

[FR Doc. 86–13661 Filed 6–16–86; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: November 1986 Voting and Registration
Form Number: Agency—CPS–1; OMB—NA
Title of Request: New Collection
Burden: 57,500 respondents; 986 reporting hours
Needs and Uses: This survey provides data on the socioeconomic characteristics of voters and nonvoters and continues the data built up on previous voting and registration supplements since 1964.
Affected Public: Individuals or households
Frequency: Biennially
Respondent's obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: Current Population Survey/Computer Assisted Telephone Interviewing (CATI)–Phase II
Form Number: Agency—CPS–1, CPS–260; OMB—0607–0199
Type of Request: Revision of a currently approved collection
Burden: 8,724 respondents; 5,583 reporting hours
Needs and Uses: This project will provide data on feasibility of conducting CPS interviews by telephone from a centralized facility by comparing summary labor force estimates from the CATI sample with those from the basic CPS sample in the same areas.
Affected Public: Individuals or households
Frequency: Monthly
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendation for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer,

Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: June 12, 1986.

Edward Michals,

Department Clearance Officer, Information Management Division Management.

[FR Doc. 86-13630 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-07-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration

Title: Distribution License Procedure

Form Number: Agency—EAR 373.3; OMB—0625-0052

Type of Request: Extension of the expiration date

Burden: 34,165 respondents; 84,203 reporting/recordkeeping hours

Needs and Uses: The Distribution License is a special licensing procedure that facilitates the export of commodities for the United States international marketing programs. The requested information is used to determine the reliability of both the U.S. exporter and consignees in foreign countries to participate in this licensing program.

Affected Public: Businesses or other for-profit institutions, small businesses or organizations.

Frequency: On occasion, quarterly

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Sheri Fox, 395-3785

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: June 12, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-13631 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 19-86]

Foreign-Trade Zone 29; Louisville, KY; Application for Subzone at Toyota Auto Plant in Scott County, KY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, requesting special-purpose subzone status for the automobile manufacturing plant of Toyota Motor Manufacturing, U.S.A., Inc., Scott County, Kentucky, some 45 miles from the Louisville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zone Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 4, 1986.

The proposed subzone would be located at the new Toyota plant at Delaplain Rd. and Interstate 75 near Georgetown, Kentucky. The 400-acre facility, which is under construction, will employ 3,000 persons to produce compact automobiles. At the outset, about half the value of the autos will involve foreign parts and material such as engines, transmissions, sterning systems, brake assemblies and steel. Some exports are expected.

Zone procedures will alow Toyota to avoid duty payments on the foreign parts used in its exports. On its domestic sales the company will be able to take advantage of the same duty rate available to importers of finished autos. The duty rates on the prospective imported components range from 3.2 to 5.6 percent, whereas the duty rate on finished autos is 2.6 percent. Subzone status will be an important factor in full utilization of this plant.

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 Zone Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Bldg., 55 Erieview Plaza, Cleveland, OH 44114; and Colonel Dwayne G. Lee, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201.

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 July 25, 1986.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, U.S. Post Office and Courthouse, Building, Room 636 B, Louisville, KY 40202.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Rm 1529, 14th and Pennsylvania Ave., NW., Washington, DC 20230.

Dated: June 11, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-13632 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-122-604]

Initiation of Antidumping Duty Investigation; Certain Fresh Cut Flowers from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain fresh cut flowers (cut flowers) from Canada are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, and we will make our preliminary determination on or before October 28, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to cut flowers from Canada. In compliance

with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cut flowers from Canada and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether cut flowers from Canada are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and standard carnations, currently provided for in item 192.21 of the TSUS.

United States Price and Foreign Market Value

Petitioner based United States price on the monthly average f.o.b. unit values of cut flower imports as derived from the Bureau of Census import statistics.

Petitioner based foreign market value on the constructed values of cut flowers because it states that it does not have information on home market prices. Petitioner derived the constructed values through the use of United States growers' costs, adjusted for differences between U.S. and Canadian costs for labor.

Based on the comparison of these estimated values, the petitioner alleges average dumping margins ranging from zero to 14.8 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 7, 1986, whether there is a reasonble indication that imports of cut flowers from Canada materially injure, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 10, 1986.

[FR Doc. 86-13635 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-301-602]

Initiation of Antidumping Duty Investigation: Certain Fresh Cut Flowers From Colombia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain fresh cut flowers (cut flowers) from Colombia are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, and we will make our preliminary determination on or before October 28, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to cut flowers from Colombia. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Colombia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cut flowers from Colombia and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether cut flowers from Colombia are being, or are likely to be, sold in the United States at less than fair market value.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and standard carnations, standard chrysanthemums, pompon chrysanthemums, alstroemeria, gerbera, and gypsophila, currently provided for in item 192.21 of the TSUS.

United States Price and Foreign Market Value

Petitioner based United States price on monthly average unit values of cut flower imports as derived from the Bureau of Census and Department of Agriculture import statistics. Petitioner subtracted estimated charges for airfreight and U.S. duties from delivered prices, where applicable.

Petitioner based foreign market value on the constructed value of cut flowers because it alleges that growers sell only "second" or "culls" in the home market and export all of their merchantable fresh cut flowers. Petitioner derived the constructed values through use of United States growers' costs, adjusted for differences between U.S. and

Colombia costs for raw materials, variable overhead, depreciation, interest on working capital, and labor.

Based on the comparison of these estimated values, petitioner alleges dumping margins ranging from zero to 210.0 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistance Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 7, 1986, whether there is a reasonable indication that imports of cut flowers from Colombia materially injure, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 10, 1986.

[FR Doc. 86-13636 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-223-602]

Initiation of Antidumping Duty Investigation; Certain Fresh Cut Flowers From Costa Rica

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain fresh cut flowers (cut flowers) from Costa Rica are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, and we will make our preliminary determination on or before October 28, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone, (202) 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form the Floral Trade Council with respect to cut flowers from Costa Rica. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitions alleges that imports of the subject merchandise from Costa Rica are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cut flowers from Costa Rica and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether cut flowers from Costa Rica are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and standard carnations, and pompon chrysanthemums, currently provided for in item 192.21 of the TSUS.

United States Price and Foreign Market Value

Petitioner based United States price on monthly average unit values of cut flower imports as derived from the Bureau of Census and Department of Agriculture import statistics. Petitioner subtracted estimated charges for insurance, freight and duty from delivered prices, here applicable.

Petitioner based foreign market value on the constructed value of cut flowers because it alleges that growers sell only "second" or "culls" in the home market and export all of their merchantable fresh cut flowers. Petitioner derived the adjusted constructed values through use of United States growers' costs, adjusted for differences between U.S. and Costa Rican costs for raw materials, variable overhead, depreciation, interest on working capital, and labor.

Based on the comparison of these estimated values, petitioner alleges dumping margins ranging from zero to 134.8 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 7, 1986, whether there is a reasonable indication that imports of cut flowers from Costa Rica materially injure, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 723(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 10, 1986.

[FR Doc. 86-13637 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[A331-602]

Initiation of Antidumping Duty Investigation; Certain Fresh Cut Flowers from Ecuador

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain fresh cut flowers (cut flowers) from Ecuador are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, and we will make our preliminary determination on or before October 28, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–5404 or 377–3965.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to cut flowers from Ecuador. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Ecuador are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cut flowers from Ecuador and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether cut flowers from Ecuador are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are fresh cut minature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and standard carnations, standard chrysanthemums and pompon chrysanthemums, currently provided in item 192.21 of the TSUS.

United States Price and Foreign Market Value

Petitioner based United States price on monthly average unit values of cut flower imports as derived from the Bureau of Census and Department of Agriculture import statistics.

Petitioner based foreign market value on the constructed value of cut flowers because it alleges that growers sell only "second" or "culls" in the home market and export all of their merchantable fresh cut flowers. Petitioner derived the constructed values through use of United States growers' costs, adjusted for differences between U.S. and Ecuadorian costs for raw materials, depreciation, variable overhead, interest on working capital and labor.

Based on the comparisons of these estimated values, petitioner alleges average dumping margins ranging from zero to 355.9 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 7, 1986, whether there is a reasonable indication that imports of cut flowers from Ecuador materially injure, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 10, 1986.

[FR Doc. 86–13638 Filed 6–16–86; 8:45 am]

BILLING CODE 3510-DS-M

[A-779-602]

Initiation of Antidumping Duty Investigation; Certain Fresh Cut Flowers from Kenya

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain fresh cut flowers (cut flowers) from Kenya are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, as we will make our preliminary determination on or before October 28, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3965.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to cut flowers from Kenya. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Kenya are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Traiff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cut flowers from Kenya and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether cut flowers from Kenya are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States)* (TSUS), and standard carnations, currently provided for in item 192.21 of the TSUS.

United States Price and Foreign Market Value

Petitoner based United States price on quarterly average unit price f.o.b. origin of cut flower imports as derived from the Bureau of Census IM145 import statistics.

Petitioner based foriegn market value on the constructed values of cut flowers because it alleges that growers sell only "seconds" or "culls" in the home market and export all of their merchantable fresh cut flowers. Petitioner derived the constructed values through use of the United States growers' costs for raw materials, depreciation, interest on working capital, and labor.

Based on the comparision of these estimated values, petitioner alleges dumping margins ranging from 63.5 percent to 195.4 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 7, 1986, whether there is a reasonable indication that imports of cut flowers from Kenya materially injure, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 10, 1986.

[FR Doc. 86-13639 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-601]

Initiation of Antidumping Duty Investigation; Certain Fresh Cut Flowers From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain fresh cut flowers (cut flowers) from Mexico are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, and we will make our preliminary determination on or before October 28, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to cut flowers from Mexico. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cut flowers from Mexico and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether cut flowers from Mexico are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are fresh cut standard carnations, standard chrysanthemums, and pompon chrysanthemums, currently provided for in item 192.21 of the *Tariff Schedules of the United States.*

United States Price and Foreign Market Value

Petitioner based United States price on monthly average unit values of cut flower imports as derived from the Bureau of Census and Department of Agriculture import statistics.

Petitioner based foreign market value on the constructed value of cut flowers because it alleges that growers sell only "second" or "culls" in the home market and export all of their merchantable fresh cut flowers. Petitioner derived the constructed value through use of United States growers' costs, adjusted for differences between U.S. and Mexican costs for raw materials, variable overhead, depreciation, interest on working capital, and labor.

Based on the comparison of these estimated values, petitioner alleges dumping margins ranging from zero to 254.5 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will

notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 7, 1986, whether there is a reasonable indication that imports of cut flowers from Mexico materially injure, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary, for Import Administration.

June 10, 1986.

[FR Doc. 86-13640 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-333-602]

Initiation of Antidumping Duty Investigation; Certain Fresh Cut Flowers From Peru

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain fresh cut flowers (cut flowers) from Peru are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, and we will make our preliminary determination on or before October 28, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to cut flowers from Peru. In compliance with the filing requirements of 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Peru are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cut flowers from Peru and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether cut flowers from Peru are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and pompon chrysanthemums and gypsohila, currently provided for in item 192.21 of the TSUS.

United States Price and Foreign Market Value

Petitioner based United States price on montly average unit values of cut flower imports as derived from the Bureau of Census and Department of Agriculture import statistics.

Petitioner based foreign market value on the constructed values of cut flowers because it alleges that growers sell only "seconds" or "culls" in the home market and export all of their merchantable fresh cut flowers. Petitioner derived the constructed values through use of United States growers' costs, adjusted for differences between U.S. and Peruvian costs for raw materials, variable overhead, depreciation, interest on working capital, and labor.

Based on the comparison of these estimated values, petitioner alleges dumping margins ranging from zero to 62.1 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration

Preliminary Determination by ITC

The ITC will determine by July 7, 1986, whether there is a reasonable indication that imports of cut flowers from Peru materially injure, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary, for Import Administration.

June 10, 1986.

[FR Doc. 86-13641 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-337-602]

Initiation of Antidumping Duty Investigation; Standard Carnations From Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether standard carnations from Chile are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this

investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, and we will make our preliminary on or before July 7, 1986, and we will make our preliminary determination on or before October 28, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel or John Brinkmann, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone; (202) 377–5404 or 377–3965.

SUPPLEMENTARY INFORMATION:

The Petition

On may 21, 1986, we received a petiton in proper form from the Floral Trade Council with respect to standard carnations from Chile. In compliance with the filing requirement of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Chile are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Intitiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on standard carnations from Chile and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether standard carnations from Chile are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are fresh cut standard carnations, currently provided for in item 192.21 of the *Tariff Schedules of the United States*. (TSUS). United States Price and Foreign Market Value Petitioner based United States price, F.O.B. origin, on monthly average unit values of imports of standard carnations as derived from the Bureau of Census.

Petitioner based foreign value on the constructed value of standard carnations because it alleges that growers sell only "second" or "culls" in the home market and export all of their marketable standard carnations. Petitioner derived the constructed values through use of United States growers' costs, adjusted for differences between U.S. and Chilean costs for labor.

Based on the comparison of these estimated values, petitioner alleges average dumping margins ranging from 83.1 percent to 237.5 percent during the most recent annual period.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration

Preliminary Determination by ITC

The ITC will determine by July 7, 1986, whether there is a reasonable indication that imports of standard carnations from Chile materially injure, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed accordingly to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary, for Import Administration.

June 10, 1986.

[FR Doc. 86–13642 Filed 6–16–86; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–606]

Tubeless Steel Disc Wheels From Brazil: Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the bsiss of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether tubeless steel disc wheels (wheels) from Brazil are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, and we will make ours on or before October 30, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone; (202) 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

On May 23, 1986, we received a petition in proper form filed by the Budd Company, a domestic manufacturer of tubeless steel disc wheels. The petition was filed on behalf of the United States industry producing tubeless steel disc wheels. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on wheels from Brazil and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumption duty investigation to determine whether wheels are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The product covered by this investigation is tubeless steel disc wheels, designed to be mounted with pneumatic tires, suitable for use on both class 6, 7 and 8 trucks, including

tractors, and semi-trailers, and currently classified under the *Tariff Schedules of the United States Annotated* (TSUSA) item number 692.3230.

United States Price and Foreign Market Value

The petitioner based United States price on the F.O.B. port of entry price offered by the unrelated U.S. agent of a Brazilian producer to U.S purchase price by subtracting estimated charges for importer markup, net ocean freight, customs duties, and brokerage.

The petitioner based foreign market value on actual sales or offers by Brazilian producers in the home market. Using these prices, we arrived at a net foreign market price by subtracting the ICM (value added tax) rebated upon export.

Based on the comparison of these estimated values, the petitioner alleges average dumping margins ranging from 125.43 percent to 160.88 percent

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 7, 1986, whether there is a reasonable indication that imports of wheels from Brazil are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 12, 1986.

[FR Doc. 86-13634 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-603]

Initiation of Countervailing Duty Investigation: Certain Fresh Cut Flowers From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Canada of certain fresh cut flowers (cut flowers), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, and we will make ours on or before August 14, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to cut flowers from Canada. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers or exporter in Canada of cut flowers receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to the U.S. industry.

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry.

On June 6, 1986, the Government of Canada exercised its right to consultation pursuant to Article 3:1 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cut flowers from Canada and have found that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(c), we are initiating a countervailing duty investigation to determine whether producers or exporters in Canada of cut flowers as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before August 14, 1986.

Scope of the Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and standard carnations, currently provided for in item 192.21 of the TSUS.

Allegations of Subsidies

The petition lists a number of practices by the Government of Canada and certain provincial governments which allegedly confer subsidies on producers or exporters in Canada of cut flowers. We are initiating an investigation on the following alleged programs:

Federal Programs

- Investment Tax Credits
- Farm Improvement Loans
- Program for Export Market Development
- Promotional Projects Program
- Loans Under the Enterprise Development Program

Joint Federal-Provincial Programs

- Agricultural and Rural Development Agreements
- General Development Agreements
- Economic and Regional Development Agreements
- Crop Insurance

Provincial Programs

- Ontario Development Corporation
- Ontario Greenhouse Energy Efficiency Incentives
- Provincial Crop Insurance
- Alberta Beginning Farmer Assistance Program
- British Columbia Greenhouse Farm Income Insurance Program

• British Columbia Agricultural Land Development Assistance

We are not initiating an investigation on the following programs:

Federal Programs

1. Farm Credit Corporation Programs

a. Farm Credit Act

Canada's Farm Credit Act of 1959 provides long-term loans to individual farmers, farming corporations, and cooperative farm associations for the acquisition of farm land and for a broad array of agricultural operations. The program is administered by the Farm Credit Corporation.

b. Farm Syndicates Credit Act

The Farm Syndicates Credit Act provides long-term loans to farming corporations, cooperative farm assocations and other farm associations for the purchase or improvement of farm buildings and land, and for the acquisition of farm machinery. The program is administered by the Farm Credit Corporation.

Both the Farm Credit Act and the Farm Syndicates Credit Act were found not to be limited to a specific enterprise or industry, or group of enterprises or industries in the *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada (Live Swine)* (50 FR 25097). Because petitioner has not presented any new information or alleged changed circumstances with respect to these programs, we are not initiating an investigation on these programs.

2. Grants and Term Loan Insurance Under the Enterprise Development Program

As noted earlier, the purpose of the EDP was to promote productivity in the manufacturing and processing sector by encouraging innovations in the production process. In *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada* (51 FR 10041), we found that grants and term loan insurance were not limited to a specific enterprise or industry, or group of enterprises and industries. Because petitioner has not presented any new information or alleged changed circumstances with respect to this program, we are not initiating an investigation on grants and term loan insurance under this program.

Provincial Programs

1. Ontario Young Farmer Credit Program

This program provides a rebate of interest charges on loans from approved lenders to a maximum rebate of 5 percentage points, based on the difference between the Farm Credit Corporation rate at the time of entry and eight percent. Assistance is available to all beginning farmers in Ontario. This program was found not to be limited to a specific enterprise or industry, or group or enterprises or industries in *Live Swine, supra*. Because petitioner has not presented any new information or alleged changed circumstances with respect to this program, we are not initiating an investigation on this Program.

2. British Columbia Agriculture Credit Act

a. Guaranteed Loan Program

Under this program loans and loan guarantees are provided to eligible farmers. The program does not designate specific products for receipt of funding nor establish differing terms for specific products.

b. Partial Interest Reimbursement

This program operates to reimburse farmers in British Columbia for part of the interest on loans. Similar to the Guaranteed Loan Program, it does not designate specific products for receipt of funding nor establish differing terms for specified products.

Both these programs were found not to be limited to a specific enterprise or industry, or group of enterprises or industries in *Live Swine, supra*. Because petitioner has not presented any new information or alleged changed circumstances with respect to these programs, we are not initiating on these programs.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 7, 1986, whether there is a reasonable indication that imports of cut flowers from Canada materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 10, 1986.

[FR Doc. 86-13643 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-223-601]

Initiation of Countervailing Duty Investigation: Certain Fresh Cut Flowers From Costa Rica

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Costa Rica of certain fresh cut flowers (cut flowers), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination on or before August 14, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to cut flowers from Costa Rica. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers or exporters in Costa Rica of cut flowers receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Costa Rica is not a "country under the Agreement" within the meaning of section 701(b) of the Act and, therefore, section 303 of the Act applies to this investigation. The merchandise being investigated is nondutiable. However, there is no "international obligation" within the meaning of section 303(a)(2) of the Act which requires an injury

determination for nondutiable merchandise from Costa Rica. Therefore, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cut flowers from Costa Rica and have found that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(c), we are initiating a countervailing duty investigation to determine whether producers or exporters in Costa Rica of cut flowers as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before August 14, 1986.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and pompon chrysanthemums and standard carnations, currently provided for in item 192.21 of the TSUS.

Allegations of Bounties or Grants

The petition lists a number of practices by the Government of Costa Rica which allegedly confer bounties or grants on producers or exporters in Costa Rica of cut flowers. We are initiating an investigation on the following alleged programs:

- Tax Credit Certificates (CATS).
- Export Increment Certificates (CIEX).
- Income Tax Exemption for Export Earnings.
- Import Tax Exemption for Materials and Machinery.
- Preferential Financing.
- Accelerated Depreciation.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 10, 1986.

[FR Doc. 86-13644 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-331-601]

Initiation of Countervailing Duty Investigation: Certain Fresh Cut Flowers From Ecuador

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Ecuador of certain fresh cut flowers (cut flowers), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we make make our preliminary determination on or before August 14, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION:

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to cut flowers from Ecuador. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers or exporters in Ecuador of cut flowers receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Ecuador is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and therefore, section 303 of the Act applies to this investigation. The merchandise being investigated is nondutiable. However, there is no "international obligation" within the meaning of section 303(a)(2) of the Act which requires an injury determination for nondutiable merchandise from Ecuador. Therefore, the domestic industy is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cut flowers from Ecuador and have found that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(c), we are initiating a countervailing duty investigation to determine whether producers or exporters in Ecuador of cutflowers as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before August 14, 1986.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and pompon chrysanthemums, standard chrysanthemums, and standard carnations, currently provided for in item 192.21 of the TSUS.

Allegations of Bounties or Grants

The petitions lists a number of practices by the government of Ecuador which allegedly confer bounties or grants on producers or exporters in Ecuador of cut flowers. We are initiating an investigation of the following alleged programs:

- Tax Credit Certificates for Exports.
- FOPEX Export Credit.
- Low-Cost Loans for Agricultural Projects.
- Tax Deductions for New Investment.
- Tax Holiday.
- Tax Exemptions on Transfers of Real Estate.
- Other Tax Exemptions.
- Import Duty Exemptions.
- Government Refinancing of Private Debt.
- Preferential Loans for Import of Seeds.

• Although not specifically alleged by petitioner, we are also initiating an investigation to ascertain whether producers or exporters in Ecuador of cut flowers receive any benefits under the following program because we have information indicating that this program may provide a bounty or grant:

• Sales and Income Tax Exemptions.

We are not inititating an investigation on the following alleged program:

Exemptions for Import Duties on Raw Materials Incorporated Into Export Goods

Petitioners alleges that Category "A" enterprises are exempt from import duties on raw materials incorporated into products which are later re-exported. However, duty exemptions on imported items, such as raw materials, which are physically incorporated into exported products are not countervailable under Annex I to the Commerce Regulations (19 CFR 355, Annex I).

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplin,

Deputy Assistant Secretary for Import Administration.

June 10, 1986.

[FR Doc. 86-13645 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-603]

Initiation of Countervailing Duty Investigation: Certain Fresh Cut Flowers From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Israel of certain fresh cut flowers (cut flowers), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, and we will make ours on or before August 14, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to cut flowers from Israel. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers or exporters in Israel of cut flowers receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or theaten material injury to the U.S. industry.

Since Israel is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry.

On June 10, 1986, the Government of Israel exercised its right to consultation pursuant to Article 3:1 of the Agreement on Interpretation and Application of Articles VI, XVI, and XIII of the General Agreement on Tariffs and Trade.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cut flowers from Israel and have found that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(c), we are initiating a countervailing duty investigation to determine whether producers or exporters in Israel of cut flowers, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before August 14, 1986.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and gerbera, currently provided for in item 192.21 of the TSUS.

Allegations of Subsidies

The petition lists a number of practices by the Government of Israel which allegedly confer subsidies on producers or exporters in Israel of cut flowers. We are initiating an investigation on the following alleged programs:

• Encouragement of Capital Investments Law 5719-1959 (ECIL).

—Investment Grants.
—Property Tax Exemption on Equipment
—Preferential Accelerated Depreciation
—Other tax Benefits
—Interest Subsidy Payments
—Drawback Grants

• Export Credit Fund.

—Export Production Fund
—Export Shipments Fund
—Imports-for Exports Fund

• Government-Guaranteed Minimum Price Program.

• Export Promotion Financing Fund.

• Cash Payments to Growers for Greenhouses.

• Cash Payments to Packing Houses.

• Government Funding of Agrexco and Purchase of Agrexco Shares.

• Long-Term Loans to Packing Houses/Exporters.

• Export Insurance Premiums.

• Government Support of the Flower Board.

• Exchange Rate Risk Insurance Scheme.

• Fuel Grants and Low-Cost Credit.

• Research and Development Programs.

Although not specifically alleged by petitioner, we are also initiating an investigation to ascertain whether producers or exporters in Israel of cut flowers receive any benefits under the following programs:

• Capital Fund for Agrexco.

• Encouragement of Industry (Taxes) Law 5729-1969.

—Preferential Accelerated Depreciation
—Reduction in Income Tax Rates
—Tax Deductible Inventory Adjustments

• Export Credit Fund.

—Special Export Financing Loans

• Other Benefits Referenced in the ECIL.

—Low-Cost Development Loans
—Labor Training Supported by the Ministry of Labor

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 7, 1986, whether there is a reasonable indication that imports of cut flowers from Israel materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-13646 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-779-601]

Initiation of Countervailing Duty Investigation: Certain Fresh Cut Flowers from Kenya

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Kenya of certain fresh cut flowers (cut flowers) as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants with the meaning of the countervailing duty law. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of the subject merchandise from Kenya materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, and we will make ours on or before August 14, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to cut flowers from Kenya. In compliance with the filing requirements of 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers or exporters in Kenya of cut flowers receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Since Kenya is not a "country under the Agreement" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), section 303 of the Act applies to this investigation. However, because Kenya is a signatory to the General Agreement on Tariffs and Trade and the cut flowers subject to this investigation are non-dutiable, the petitioner is required to allege that, and the ITC is required to determine whether, imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry. Therefore, we are notifying the ITC of this action.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cut flowers from Kenya and have found that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(c), we are initiating a countervailing duty investigation to determine whether producers or exporters in Kenya of cut flowers as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before August 14, 1986.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and standard carnations, currently provided for in item 192.21 of the TSUS.

Allegations of Bounties or Grants

The petitioner list a number of practices by the Government of Kenya which allegedly confer bounties or grants on producers or exporters in Kenya of cut flowers. We are initiating an investigation on the following alleged programs:

- Export Compensation Act.
- Investment Allowances.
- Research and Development Support.

We are not initiating an investigation on the following alleged programs:

Preferential Air Freight Rate for Exporters

Petitioner alleges that the Government of Kenya subsidizes air freight rates for exporters. In an article submitted as part of the petition, a reference is made to an alleged subsidization of air freight between Kenya and the Federal Republic of Germany. Petitioner has presented no further information which indicates that the alleged subsidization bears any relation to exports of cut flowers to the United States, nor as to the form of this subsidization. Therefore, we are not initiating an investigation on this program.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration

Preliminary Determination by ITC

The ITC will determine by July 7, 1986, whether there is a reasonable indication that imports of cut flowers from Kenya materially injure, or threaten material injury to, a United States industry. If its

determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary, for Import Administration.

June 10, 1986.

[FR Doc. 86-13647 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-421-601]

Initiation of Countervailing Duty Investigation: Certain Fresh Cut Flowers From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in the Netherlands of certain fresh cut flowers (cut flowers), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from the Netherlands materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, and we will make ours on or before August 14, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to cut flowers from the Netherlands. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers or exporters in the Netherlands of cut flowers receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to the U.S. industry.

Since, the Netherlands is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from the Netherlands materially injure, or threaten material injury to, a U.S. industry.

On June 9, 1986, the Government of the Netherlands exercised its right to consultation pursuant to Article 3:1 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cut flowers from the Netherlands and have found that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(c), we are initiating a countervailing duty investigation to determine whether producers or exporters in the Netherlands of cut flowers, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before August 14, 1986.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and standard chrysanthemums, alstroemeria, and gerbera, currently provided for in item 192.21 of the TSUS.

Allegations of Subsidies

The petition lists a number of practices by the Government of the Netherlands which allegedly confer subsidies on producers of exporters in the Netherlands of cut flowers. We are initiating an investigation on the following alleged programs:

- Natural Gas Provided at Preferential Rates.
- Investment Incentive (WIR)—Regional Program.
- Aids for the Creation of Cooperative Organizations.
- Loans at Preferential Interest Rates.
- Guarantee Fund for Agriculture.
- Funding of Interest on Loans.
- Glasshouse Enterprises.
- Steam Drainage Systems.
- Energy Saving Aids.
- Land Bank Regulation.

We are not initiating an investigation on the following program:

Investment Incentive (WIR)—Investment Tax Credits

Petitioners alleges that Dutch auction houses receive tax investment credits and incentives under the WIR program. This program was found not countervailable in *Final Negative Countervailing Duty Determinations: Certain Steel Products from the Netherlands (Certain Steet Products)* (47 FR 39372). Petitioner has not presented any new information, or alleged changed circumstances which would cause us to reconsider our decision in *Certain Steel Products.*

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it conforms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determination by July 7, 1986, whether there is a reasonable indication that imports of cut flowers from the Netherlands materially injure, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-13648 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-601]

Initiation of Countervailing Duty Investigation: Certain Fresh Cut Flowers From Peru

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Peru of certain fresh cut flowers (cut flowers) as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Peru materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, and we will make ours on or before August 14, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Traverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to cut flowers from Peru. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26) the petition alleges that producers or exporters in Peru of cut flowers receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to the U.S. industry.

Since Peru is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 applies to this investigation. However, because Peru is a member of the General Agreement on Tariffs and Trade and the cut flowers subject to this investigation are non-dutiable, the petitioner is required to allege that, and the ITC is required to determine whether, imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry. Therefore, we are notifying the ITC of this action.

Initiation of Investgation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cut flowers from Peru and have found that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(c), we are initiating a countervailing duty investigation to determine whether producers or exporters in Peru of cut flowers as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before August 14, 1986.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), pompon chrysanthemums, and gypsophila, currently provided for in item 192.21 of the TSUS.

Allegations of Bounties or Grants

The petition lists a number of practices by the Government of Peru which allegedly confer bounties or grants on producers or exporters in Peru of cut flowers. We are initiating an investigation on the following alleged programs:

- The Certificate of Tax Rebate (CERTEX).
- Nontraditional Export Fund (FENT).
- The Law for the Promotion of Export of Non-Traditional Goods (Export Law).

—Articles 12, 13, 14, 16, 23, 24, and 31

- Employment Benefits for Decentralized Companies.
- Regional Incentives.
- Argo-Industrial Rediscount Fund (FRAI).

We are not initiating an investigation on the following alleged programs:

- Articles 8 and 9 of the Export Law Petitioner alleges that Peruvian cut flower producers and exporters may benefit from Articles 8 and 9 of the Export Law, which permit exporters to upgrade their priority level by one step. Priority levels determine the amount of net income that can be invested or reinvested free of income tax. In the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Textile Mill Products and Apparel from Peru* (50 FR 9871) (March 12, 1985), the Department ruled that the reinvestment priority system was terminated by the General Law of Industries, enacted in 1982, and, therefore, no future benefits could be provided. Because the petitioner has not presented any new information or alleged changed circumstances with respect to Articles 8 and 9 of the Export Law, we are not initiating on this program.
- Fund for Non-Traditional Export Promotion (FOPEX) Petitioner alleges that FOPEX is an additional fund to support promotional activities, established under Title IV, Chapter III of the Law for the Promotion of Nontraditional Exports. The program provides export guarantees and other forms of export financing in both the pre-shipment and post-shipment phases. In the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cotton Sheeting and Sateen from Peru* (48 FR 4501) (February 1, 1983), the Department ruled that FOPEX provides only general information on international trade, import/export development, export promotion programs, and international shipments and transportation; therefore, FOPEX does not confer bounties or grants. In the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Deformed Steel Concrete Reinforcing Bar from Peru* (50 FR 48819) (November 27, 1985), the Department ruled that FOPEX has no lending capacity. Because the petitioner has not presented any new information or alleged changed circumstances with respect to FOPEX, we are not initiating on this program.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 7, 1986, whether there is a reasonable indication that imports of cut flowers from Peru materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 10, 1986

[FR Doc. 86-13649 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-601]

Initiation of Countervailing Duty Investigation: Miniature Carnations From Colombia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Colombia of miniature carnations, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination on or before August 14, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to miniature carnations from Columbia. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers or exporters in Columbia of miniature carnations receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Columbia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioner is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on miniature carnations from Columbia and have found that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(c), we are initiating a countervailing duty investigation to determine whether producers or exporters in Columbia of miniature carnations as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before August 14, 1986.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations currently provided for in item 192.17 of the *Tariff Schedules of the United States.*

Allegations of Bounties or Grants

The petition lists a number of practices by the Government of Colombia which allegedly confer bounties or grants on producers or exporters in Colombia of miniature carnations. We are initiating an investigation on the following alleged programs:

- Tax Reimbursement Certificate Program.
- Research and Development Program.
- Working Capital Loans.
- Preferential Capital Investment Loans under Decree 2366.
- Duty and Tax Exemptions for Capital Equipment Under Plan Vallejo.
- Preferential Export Insurance.
- Preferential Air Freight Rates.
- Regional Funding to Promote Flower Production.

Although not specifically alleged by petitioner, we are also initiating an investigation to ascertain whether producers or exporters in Colombia of miniature carnations receive any benefits under the following programs:

- Preferential Export Credit Through PROEXPO.

—Credits to Export Trading Firms
—Short Term Credits for Expansion
—Credits for Export Promotion
—Credit for Raw Materials

- Benefits to Free Industrial Zones.
- Export Tax Benefits.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 10, 1986.

[FR Doc. 86-13650 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-337-601]

Initiation of Countervailing Duty Investigation: Standard Carnations From Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Chile of standard carnations, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Chile materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 7, 1986, and we will make ours on or before August 14, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On May 21, 1986, we received a petition in proper form from the Floral Trade Council with respect to standard carnations from Chile. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers or exporters in Chile of carnations receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, the U.S. industry.

Since Chile is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Chile materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on standard carnations from Chile and have found that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(c), we are initiating a countervailing duty investigation to determine whether producers or exporters in Chile of standard carnations as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before August 14, 1986.

Scope of the Investigation

The products covered by this investigation are standard carnations, currently provided for in item 192.21 of the *Tariff Schedules of the United States*.

Allegations of Subsidies

The petitions lists a number of practices by the government of Chile which allegedly confer subsidies on producers or exporters in Chile of standard carnations. We are initiating an investigation of the following alleged programs:

- Export Rebate (Simplified Drawback).
- Export Credit.
- Corporacion de Fomento Loans and Debt Rescheduling.
- Preferential Exchange Rate for Repayment of Foreign Debt.
- Deferred Import Duties for Capital Goods.
- Although not specifically alleged by petitioner, we are also initiating an investigation to ascertain whether producers or exporters in Chile of standard carnations receive any benefits under the following program because we have information indicating that such programs may provide subsidies:
  - Stamp and Seal Tax Exemption.
  - Export Rebate of VAT.
  - Tax Rebate on Fixed Assets.
  - Currency Retention Scheme (Foreign Trade Zones).
  - Export Credit Limits.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 7, 1986, whether there is a reasonable indication that imports of standard carnations from Chile materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 10, 1986.

[FR Doc. 86-13651 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DS-M

(C-351-408)

Final Affirmative Countervailing Duty Determination; Iron Ore Pellets From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of certain types of iron ore pellets. The estimated net subsidy is 2.09 percent *ad valorem*. However, we are adjusting the duty deposit rate to reflect the changes that have occurred in export and total sales for Companhia Vale do Rio Doce (CVRD) since the review period. Therefore, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of iron ore pellets from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond on entries of this product in the amount equal to 7.94 percent *ad valorem*. In addition, we determine that "critical circumstances" do not exist with respect to the subject merchandise.

We have notified the U.S. International Trade Commission (ITC) of our determination.

The Department of Commerce (the Department), Companhia Vale do Rio Doce (CVRD), the only known exporter in Brazil of iron ore pellets to the United States, and the Government of Brazil entered into a suspension agreement on May 29, 1985. On June 10, 1985, the respondents requested that we continue the investigation. On December 18, 1985, the Government of Brazil notified the Department that CVRD was withdrawing from the suspension agreement. On March 31, 1986, we published a notice of cancellation of the suspension agreement and resumption of the suspended investigation. Therefore, the affirmative preliminary determination of countervailing duties published on March 22, 1985, has been in effect of March 31, 1986.

EFFECTIVE DATE: June 17, 1986.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Peggy Clarke, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0167 (Nguyen) or (202) 377-4412 (Clarke).

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Brazil of iron ore pellets.

For purposes of this investigation, the following programs are found to confer subsidies:

- Income Tax Exemption for Export Earnings
- Import Duty Exemptions

We determine the estimated net subsidy to be 2.09 percent *ad valorem*. However, we are adjusting the duty deposit rate to reflect the changes that occurred in export and total sales for CVRD since the review period; thus, the cash deposit rate is 7.94 *ad valorem*.

Case History

On December 20, 1984, we received a petition from the Cleveland-Cliffs Iron Company, Oglebay Norton Company, Pickands Mather & Company, and the United Steelworkers of America on behalf of the U.S. Iron ore pellets industry. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of iron ore pellets directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure or threaten material injury to a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on January 9, 1985, we initiated such an investigation (50 FR 2322). We stated that we expected to issue a preliminary determination by March 15, 1985.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On February 4, 1985, the ITC determined that there is a reasonable indication that these imports materially injure, or threaten material injury to, a U.S. industry (50 FR 5286).

We presented a questionnaire concerning the allegations of the Government of Brazil in Washington, D.C., on January 25, 1985. On February 27, 1985, we received a response to the questionnaire.

There is only one know exporter in Brazil of iron ore pellets to the United States, Companhia Vale do Rio Doce (CVRD), for which we have received information from the Government of Brazil.

On March 15, 1985, we issued our preliminary determination in this investigation (50 FR 11527). We preliminarily determined that benefits constituting subsidies within the meaning of the countervailing duty law were being provided to CVRD.

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. On April 17, a hearing was held. We received briefs from the parties to the proceeding.

Verification of the response was done in Rio de Janeiro on April 23 through April 30, 1985.

On May 29, 1985, a suspension agreement was signed by the Department, CVRD, and the Government of Brazil.

On June 10, the respondents requested a continuation of the investigation.

On December 18, 1985, the Government of Brazil notified the Department of CVRD's withdrawal from the suspension agreement.

On March 31, 1986, we published a notice of cancellation of the suspension agreement and resumption of the suspended investigation. Therefore, the affirmative preliminary determination of countervailing duties published on March 22, 1985, has been in effect since March 31, 1986.

Scope of the Investigation

The product covered by this investigation is iron ore pellets. Iron ore pellets are defined, for puposes of this proceeding, as fine particles of iron oxide, hardened by heating and formed into balls of ⅜" to ⅝" for use in blast furnaces to obtain pig iron. Pellets for use in electric furnaces and containing not over three percent by weight of silica are excluded.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice to "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

For purposes of this determination, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

Based upon our analysis of the petition, the responses to our questionnaire, our verification, and comments submitted by interested parties, we determined the following:

I. Programs Determined To Confer Subsidies

We determined that subsidies are being provided to manufacturers, producers, or exporters in Brazil of iron ore pellets under the following programs:

A. Income Tax Exemption for Export Earnings

Under Decree-Law 1240, exporters of iron ore pellets are eligible for an exemption from income tax on a portion of profits attributable to export revenue. Because a firm must export to be eligible for this exemption, we determine it to be a countervailable subsidy. CVRD took an exemption from income tax payable in 1984 on Export profits earned in 1983. We indexed that portion as required under Brazilian tax law, and multiplied it by CVRD's effective corporate tax rate to find the benefit.

To find CVRD's effective tax rate, we took the base tax liability and added or subtracted all surcharges or deductions used by CVRD. We allocated the benefit over the best information estimate of 1984 exports of the products eligible for the exemption. To find the best information estimate, we took the ratio of 1983 promoted exports to 1983 total sales and applied it to 1984 total sales. We determine the estimated net subsidy from this program to be 2.00 percent *ad valorem*.

This is the first time the Department has issued a final determination following the resumption of a suspended investigation. We find that substantial changes have occurred in export in total sales for CVRD since the review period. So that the deposit rate will more accurately reflect the estimated duties on future entries, we have calculated the deposit rate for the income tax exemption for export earnings by estimating the tax exemption that CVRD would have received in 1985 on exports occurring during the 1984 review period had there been no suspension agreement. We emphasize that the curcumstances of this case are unique. We have not decided that this approach would be proper under other circumstances.

We determine the cash deposit rate for this program to be 7.85 *ad valorem*.

B. Import Tax Exemptions

Decree Law 1287 allows a 100 percent exemption from import duties and IPI tax on equipment, machinery, appliances or instruments, spare parts, etc., provided similar equipment is not produced in Brazil. This program is part of the mining industry incentives administered by the "Grupo Executivo da Industrial de Mineracao" ("GEIMI") of the Ministry of Mines and Energy. Firms must have projects approved by GEIMI to qualify for the import duty exemption. Because no evidence was

provided to demonstrate that firms other than CVRD were exempted from duties and taxes on imports under Decree-Law 1287, we find this program to be limited to a specific enterprise or industry or group of enterprises or industries, and, hence, countervailable.

We verified that CVRD used this exemption for the importation of pelletizing and mining equipment during the review period. We divided the amount of the exemption taken in 1984 by the relevant sales during the same period to find an estimated net subsidy of 0.09 percent *ad valorem*.

II. Programs Determined not To Confer Subsidies

A. Minerals Tax Incentives

Decree-Law 1038, as amended by Degree-Law 1172 and Decree 66694, established a tax on minerals ("I.UM."). Iron ore pellets are subject to this tax. The tax for iron ore pellets sold domestically is 15 percent of the ex-mine price plus the value added from marginal processing for transport (this includes pelletizing). The tax for exported iron ore pellets is 7.5 percent. The 7.5 percent tax is charged on 60 percent of the f.o.b. price.

Petitioners allege that the different tax for exports confers a subsidy on the exporters of iron ore pellets. Petitioners also allege that payment of this tax exempts a firm from paying a portion of certain direct taxes such as social security taxes and property taxes and that this exemption also confers a subsidy.

We verified that I.U.M. is an indirect tax paid at the time of transfer of the produce. Further, we verified that payment of the I.U.M. did not exempt CVRD from any of its direct tax liabilities. Since under both U.S. law and the General Agreement on Tariffs and Trade, a government may rebate or exempt firms from payment indirect taxes borne by the exported product, we determine that the lower tax rate upon exports does not confer a countervailable subsidy.

B. Depletion Allowance

Peitioner allege that the 20 percent depletion allowance for mineral projects granted by Decree-Law 1096 and extended by Decree-Law 1779 confers a subsidy on the manufacturers and producers of iron ore pellets.

We verified that any firm owning a mine is eligible for the depletion allowance. The firm has the option of taking a depletion allowance equal to the greater of:

1. The percentage of the total reserves extracted during the tax year times the original value of the mine; or

2. 20 percent of the ex-mine value of the minerals extracted during the tax year.

In the past, we have found that depreciation allowances, *per se*, are not countervailable. Because the depletion allowance, which is comparable to a depreciation allowance on minerals, is part of the normal tax practice in Brazil and because there is no indication that it favors exports over domestic products, we determine this program not to be countervailable.

C. BNDES/FINAME Loans

Petitioners allege that loans received from the National Economic and Social Development Bank (BNDES) and its subsidiary, the Speical Agency of Industrial Financing (FINAME), confer a subsidy on the manufacturers and producers of iron ore pellets. In support of this allegation, petitioners argue that iron ore pellet producers, as part of the metallurgy sector, received a disproportionate share of BNDES and FINAME loans.

In earlier determinations, we have found BNDES and FINAME loans to be provided to more than a specific enterprise or industry or group of interprises or industries, and hence not countervailable (see, for example, "Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Brazil", 49 FR 17938). Information received and verified in this case supports our earlier conclusion. For example, in the period 1978–84, the BNDES system, including BNDES and FINAME, provided loans to the industral, agricultural, and energy sectors.

We have also examined whether the metallurgy sectors has received a disproportionate share of the loans made by the BMDES system. Going back as far as 1975, we have found that the metallurgy sector accounts for 4.3 percent, on average, of BNDES loans to the industrial sector. Further, industrial financing as a share of the BNDES portfolio has been declining over much of this period. Therefore, we concluded that the metallurgy sector has not received a disproportionate share of the BNDES system loans.

Because BNDES/FINAME loans are provided to more than a specific enterprise or industry or group of enterprises or industries and there is no evidence of *de facto* selectivity in application, we find that these loans do not confer a benefit on producers of iron ore pellets in Brazil.

D. ICM State Tax Incentives

Petitioners allege that CVRD receives a rebate of the ICM state value-added tax similar to the IPI export credit premium.

Also, under Decree 1600–N, anyone selling (final stage sales only) goods in the state of Espirito Santo must pay a 17 percent ICM. Of this, 5 percent is rebated; the firm receives 4.5 percent while the other 0.5 percent goes to the bank. This rebate must be invested in corporations located in and sponsored by the state of Espirito Santo.

Because the ICM is an indirect tax, the non-excessive rebate of this tax does not confer a countervailable subsidy. Therefore, we determine that this program is not countervailable.

Further, by its terms, the rebate/reinvestment program applies to all firms selling final stage products in Espirito Santo. Therefore, we determine that the rebates are not provided to a specific enterprise or industry or group of enterprises or industries, and, thus, are not countervailable.

E. Tax Incentives Reserves

The balance sheet in CVRO's annual report listed a "tax incentives reserve." We stated in our preliminary determination that we needed more information on this reserve.

AT verification, we received that information. The "tax incentives reserve" contains the investments made by CVRD through the investments credit program for the national income tax and the ICM tax incentives program in Espirito Santo. We have determined that neither of these programs provides a countervailable subsidy (*see*, our discussion of ICM State Tax Incentives, above, and our notice of "Final Affirmative Countervailing Duty Determinatio: Carbon Steel Plate from Brazil." 38 FR 2568, January 20, 1983).

F. Government Loan Guarantees

Petitioners allege that the Brazilian government guarantees long-term loans in foreign currency on terms that are inconsistent with commercial considerations and, therefore that these guarantees are countervailable.

We verified that CVRD has not received any government-guaranteed commercial loans since 1974. However, some government-guaranteed commercial loans taken out in 1973 and 1974 are still outstanding. We found no evidence that commercial guarantees were available in 1973 and 1974. Further, we verified that CVRD had non-guaranteed loans taken out in 1974, and still outstanding, that bear the same interest rates as the guaranteed loans.

In determining whether government-loan guarantees are countevailable, we look at whether the costs and other terms of the government guarantees are less than for commercially provided guarantees; and whether the government guarantee allow a firm to receive better terms on the loan than it would without the guarantee. We had no commercial guarantees from the same period with which to compare costs, so we based our decision on the other criterion. Since CVRD was able to get the same interest rate, at the same time, or commercial loans without any guarantees, we detemine that the government guarantees do not confer a countervailable subsidy on producers and exporters of iron ore pellets.

III. Programs Determined Not To Be Used

We determine that producers or exporters in Brazil of iron ore pellets did not use the following programs listed in our notice of initiation.

A. IPI Export Credit Premium

Petitioners allege that under the Portaria Ministerial No. 78, as amended by Portaria Ministerial No. 252, exporters of iron ore pellets receive a cash reimbursement from the Government of Brazil based on the "adjusted" f.o.b. price of the exported merchandise.

We verified that producers of iron ore pellets are not eligible for the IPI credit premium. Accordingly, we determine that this program was not used by the producers of the product under investigation.

B. Financing for Storage of Export Merchandise Program: Resolution 330 of the Banco Central do Brazil

Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export. We verified that CVRD was not eligible for this program because Resolution 330 is applicable only to certain "manufactured" products listed by the Ministry of Finance. Therefore, we determine that this program was not used by the producers of the product under investigation.

C. FINEX Export-Financing Program: Resolution 68

Resolution 68 states that the Department of Foreign Commerce of the Banco do Brazil, S.A. (CACEX), may draw upon the resources of the Fundo de Financiamento a Exportacao (FINEX) to extend dollar-denominated loans to foreign buyers of Brazilian goods and cruzeiro-denominated loans to exporters. Financing is granted on a transaction-by-transaction basis.

We verified that the respondent was not eligible for this kind of financing because it is provided only with respect to "manufactured" products. Therefore, we determine that this program was not used by the producers of the product under investigation.

D. The CDI Program: Exemption of IPI Tax and Customs Duties on Imported Equipment

Article 13 of Decree Law No. 1137 granted duty-free treatment and an exemption from the IPI tax on certain imported machinery under appropriate circumstances. Accelerated depreciation was also granted on domestic machinery. This legislation was amended by Article 9 of Decree Law No. 1428 of December 2, 1975, which reduced the maximum benefit on imported machinery to an exemption of 80 percent of the customs duties and 80 percent of the IPI tax. The accelerated depreciation for domestic equipment continued.

We verified that CVRD did not receive any benefits under this program during the review period. Therefore, we determine that this program was not used by the producers of the product under investigation during the review period.

E. The BEFIEX Program: Decree-Laws 77065 and 1219

The comissao para a Concessao de Beneficios Fiscais a Programs Especiais de Exportacao (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFIEX) grants at least three categories of benefits to Brazilian exporters:

- Under Decree-Law 77065, BEFIEX may reduce by 70 to 90 percent import duties and the IPI tax on the importation of machinery, equipment, apparatus, instruments, accessories, and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials, and intermediary products;
- Under article 13 of Decree No. 1219, BEFIEX may extend the carry-forward period for tax losses from 4 to 6 years; and
- Under article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved projects. We verified that the respondent did not participate in this program. Accordingly, we determine that this program was not used during the review period.

F. The CIEX Program: Tax Reductions on Export-Production Equipment: Decree-Law 1428

Decree-Law 1428 authorized the Comissao para Incentives a Exportacao (Commission for Export Incentives, or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in import production. We verified that CVRD did not receive any benefits under this program. Accordingly, we determine that this program was not used by the producers of the product under investigation during the review period.

G. Accelerated Depreciation of Equipment: Decree Law 1137

Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. We verified that CVRD did not participate in this program during the review period. Therefore, we determine that this program was not used by the producers of the product under investigation during the review period.

H. Working Capital Financing for Exports: Resolutions 674 and 882/950

Petitioners allege that the Government of Brazil provides preferential short-term financing for working capital to companies with qualifying export performance. We verified that the respondent was not eligible for this kind of financing since such financing is only authorized for certain "manufactured" products. Therefore, we determine that this program was not used by the producers of the product under investigation.

I. Export Financing Under CIC–CREGE 14–11 Circular

Under its CIC–CREGE 14–11 circular ("14–11"), the Banco do Brazil provides 180- and 360-day cruzeiro loans for export financing for manufactured products. We verified that the respondent was not eligible for this kind of financing, since such financing is only authorized for certain "manufactured" products. Therefore, we determine that this program was not used by the producers of the product under investigation.

J. The PROEX Program: Export Promotion Credit

Petitioners allege that short-term credits for exports were established under the Programa de Financiamento a Producao para a Exportacao (PROEX),

previously referred to as the Apoio a Exportacao Program. We verified that CVRD was not eligible for and did not receive any loans under this program. Accordingly, we determine that this program was not used by the producers of the product under investigation.

K. Tax Deduction for Financial Transactions Related to the Recuperation of Capital Expended in Prospecting Mineral Deposits: Decree 58400

We verified that this program was available only to individual taxpayers. Furthermore, this program is no longer in effect. Therefore, we determine that this program was not used by the producers of the product under investigation.

L. Carajas Mines Incentives

Petitioners allege that iron ore pellet producers and exporters benefit from several programs relating to the Carajas Mine.

We verified that the Carajas Mine will produce only natural iron ore, not pellets. To produce pellets from this ore would be economically unsound and a violation of the terms of CVRD's loan agreement with the World Bank. Since our investigation deals only with iron ore pellets, we determine that these incentives did not provide benefits to the production or exportation of iron ore pellets.

M. Credit Against IPI Liability on Equipment Necessary for Mining Development: Decree 83,263 and Subsidy Reserve

Petitioners allege that producers and exporters of iron ore pellets receive benefits from these credits. This program is administered by GEIMI. Any producer with an approved project for exploration, mining, or processing of minerals may receive a rebate of the IPI tax paid on the purchase of related capital equipment.

In our preliminary determination, we said that we needed more information on the "subsidy reserve" listed on the balance sheet of CVRD's annual report. We verified that this reserve contained the credits received under Decree 83,263.

We also verified that CVRD did not receive any credits for its pelletizing equipment or for equipment for its mines. Since our investigation deals only with iron ore pellets, we determined that this program does not provide benefits to the production or exportation of iron ore pellets.

Petitioners' Comments

Comment 1. Petitioners argue that the Brazilians' withdrawal from the suspension agreement constituted a violation of the agreement because neither CVRD nor the Government of Brazil served notice of withdrawal on the petitioners. Further, petitioners submit that the notification of withdrawal was defective, alleging that the Government of Brazil is not authorized to submit the withdrawal on behalf of CVRD. Petitioners also allege that CVRD and the Government of Brazil have failed to file certifications as required by the suspension agreement. Additionally, petitioners allege that the Department should make the suspension of liquidation retroactive to all unliquidated entries of iron ore pellets made on or after December 31, 1985, which is 90 days before publication of the notice of suspension of liquidation on March 31, 1986. Lastly, petitioners assert that the appropriate period of investigation is not calendar year 1984, but 1985, the period immediately preceding termination of the agreement.

DOC Position. The notification of withdrawal from the suspension agreement was made by the Government of Brazil on behalf of CVRD pursuant to section V of the suspension agreement. The notification was a government-to-government act within the context of the agreement. Section V, which requires the Government of Brazil to notify the Department if it alters its position with respect to the agreement, does not require notification of all parties. Additionally, the withdrawal provision of Article IV(2) does not prohibit the Government of Brazil from submitting a withdrawal on CVRD's behalf. Based on the foregoing, we determine that the withdrawal did not constitute a violation of the agreement, but was made in accordance with the provisions of section IV(2).

With respect to the filing of certifications, we determine that both CVRD and the Government of Brazil have substantially complied with the filing requirements set forth in the agreement.

Further, we complied with the terms of section 704(i) by requiring a resumption of the suspension of liquidation on or after the date of publication of the cancellation of the agreement. Applied to these facts, section 704(i) provides for suspension of liquidation of entries made after the date we published notice of the determination that the agreement was no longer in force.

Lastly, we disagree with the petitioner's suggestion that the period of review be changed for purposes of this determination. The petition was filed in December 1984 to cover imports of iron ore pellets from Brazil occurring in 1984. The ITC made an affirmative preliminary injury determination based on imports during that period and we issued an affirmative preliminary countervailing duty finding for benefits bestowed during the period. Section 704(i) of the Act contemplates that the new investigation which is to be "resume[d]" is the one which was suspended.

Further, petitioners' reliance on *Leather Wearing Apparel from Argentina; Termination of Suspension Agreement and Issuance of Countervailing Duty Order* (48 FR 11480) is misplaced in that case, the Department issued a final affirmative determination, upon request, covering the original period, while the Department's review of the period immediately preceding the termination of the agreement was an administrative review of the agreement, conducted pursuant to section 751 of the Act.

Comment 2. Petitioners request that the Department, in making its final determination, not take into account any reductions in subsidies due to the implementation of the suspension agreement.

DOC Position. Consistent with section 704(j) of the statute, the Department, in making its final determination, continued the investigation without regard to the effects of the suspension agreement.

Comment 3. Petitioners argue that the Department should find BNDES/FINAME loans to be a subsidy for several reasons. First, BNDES/FINAME loans are granted at below market rates for "normal lending." Second, BNDES runs a specific lending program for the mineral sector with subsidized interest rates. Third, the Court of International Trade (see, *Bethlehem Steel Corp.* v. *United States*, 590 F. Supp. 1237 (1984)) has rejected the rationale that generally available benefits are not subsidies. Finally, even if the general availability doctrine were applicable, BNDES/FINAME loans are not generally available.

Department's Position. We disagree. We do not consider programs made available to more than a specific enterprise or industry or group of interprises or industries to be countervailable. Petitioners' reliance on *Bethlehem Steel Corp.* is misplaced since the Court in that case upheld our determination that a generally available tax benefit is not countervailable. The Court's further comments on general availability are dicta and do not affect the Court's earlier approval of our general availability test in *Carlisle Tire*

and Rubber Co. v. *United States*, 564 F. Supp. 834 (1983).

We found that the minerals sector did not receive a disproportionate share of the BNDES/FINAME financing and that such financing was available to a broad spectrum of the economy. Therefore, these loans are provided to more than a specific enterprise or industry, or group of enterprises or industries. Thus, the interest rate is irrelevant. Finally, we verified that CVRD borrowed no funds through the lending program specifically for the minerals sector.

Comment 4. Petitioners state that the subsidies to the Carajas mine project should be included in our calculations because there is no evidence on the record the Carajas will never produce pellets. Additionally, they argue that it is unclear whether the Carajas subsidies are specifically tied to production from the Carajas project or whether they benefit the company as a whole. Unless these subsidies can be specifically linked to the Carajas project they should be countervailed.

Department's Position. We verified that CVRD does not intend to produce pellets at Carajas. The information supporting this finding is on the record. The Carajas subsidies alleged by petitioners (infrastructure, regional tax benefits) are, by definition, for the Carajas project. Since the programs are for the Carajas project and the Carajas project will not produce pellets, we did not consider these programs. If this factual situation were to change, such change would be addressed in any subsequent reviews under section 751 of the Act.

Comment 5. Petitioners argue that the scope of the investigation should include natural ore as well as pellets. They claim that natural ore was included in the petition since the items listed in the Tariff Schedules of United States Annotated (TSUSA) included the natural ore as did the petitioners' discussion of threat of material injury.

Department's Position. We disagree that the scope of the investigation properly includes natural ore. The TSUSA items listed in the petition are basket items including several products clearly outside the scope of this investigation (*e.g.*, sinter fines, ore mud, chips, etc.). Therefore, the mere fact that a product falls under the TSUSA items listed does not mean that it is included in the scope.

We based the scope of our investigation on the written product description which included processed pellets only. The discussion of natural iron ore in describing the threat of material injury is not sufficient for the Department to include this product within the scope of the investigation. Further, we note that the petitioners, in a January 27, 1985, letter, agreed with our limiting the scope of the investigation to processed pellets.

Comment 6. Peittioners argue that, even if the scope of the investigation is limited to processed pellets, both TSUSA items 601.2450 and 601.2430 should be included in the scope, since processed pellets are entering the United States under both TSUSA items.

Department's Position. It is the written description, not the TSUSA item, that determines the scope of the investigation. We have emphasized this in our instructions to the Customs Service and have not included any TSUSA items in the scope section of this notice. Therefore, any of the subject merchandise entered, even if entered under the wrong TSUSA item, would be liable for countervailing duties.

Comment 7. Petitioners argue that low-silica pellets for use in electric furnaces should be included in the scope. Low-silica pellets compete directly with the domestically-produced products since U.S. pellet producers could extract silica from their pellets if the price were right. Further, low-silica pellets could be used in blast furnaces, with additional processing. Finally, petitioners argue that the exclusion creates a potential for customs fraud; since low- and high-silica pellets look the same, an importer could declare that the imported product is low-silica even if it is not.

Department's Position. The product description included in the petition covers pellets "for use in blast furnaces." Thus, pellets for use in electric furnaces are implicity excluded. We have clarified this in our statement of scope. Further, petitioners admit that there is no U.S. producer of low-silica pellets and that such pellets could not be used in a blast furnace without adjustments to the blast furnace. Thus, low-silica pellets should not be included within the scope, since, without further processing, they cannot be used in blast furnaces. Additionally, the two types of pellets have different chemical compositions which serve as legitimate means of separating the two types for Customs purposes.

Comment 8. Petitioners claim that all of CVRD's loans have government guarantees under Decree 6,404, whether there is an explicit loan guarantee or not. This decree states that the government will not allow any mixed-economy company to fail on its financial obligations.

Department's Position. We do not agree that this decree acts as a loan guarantee. Under normal international commercial practices, the liability of a government for the debts of a mixed-economy company (a company with partial government ownership) is not considered a guarantee. We note that lenders that normally require government guarantees (such as the World Bank and various countries' Ex-Im-like banks) did do in CVRD's case as well. Finally, the obligation the government assumed through Decree 6,404 is not the same as the obligation it would assume in a loan guarantee.

Comment 9. Petitioners claim that the respondents provided an inadequate response on loan guarantees. Therefore, the Department should use the best information available to determine the subsidy from this program. The petitioners provided a sample calculation which used LIBOR plus a spread plus a risk premium to find the appropriate benchmark interest rates for foreign currency-denominated loans. For cruzeiro-denominated loans, petitioners used the the rate for 180 days working capital loans as reported in the *Gazeta Mercantil*.

Department's Position. In our questionnaire, we asked only about government loan guarantees on commercial loans. We verified that the respondents accurately reported every commercial loan with a government loan guarante that was outstanding during the review period. Thus, the respondents did provide an adequate response.

Comment 10. Petitioners claim that the Department failed to investigate an allegation concerning accelerated depreciation for railroads. Additionally, the Department failed to explain why it did not investigate this allegation. Petitioners argue that, since CVRD owns rail lines which are used for transporting pellets, the pellets are subsidized by the accelerated depreciation for rail equipment allowed under Brazilian federal tax law.

Department's Position. The accelerated depreciation for rail lines is similar to the accelerated depreciation for ships, which we have said we would not investigate (see our response to Petitioners' Comment 23). This program is specifically tied to a product (rail lines) other than the product under investigation. To the extent that the accelerated depreciation would create preferential transport prices for the ore transported on the rail lines, we would consider the benefits from the program. However, petitioners provided no information that preferential prices existed. Further, the accelerated depreciation is available to all owners of rail equipment in Brazil and there is

no reason to believe that CVRD's transport prices are any different from those available to other lines. Therefore, there was no basis to investigate this allegation.

Comment 11. Petitioners support the Department's preliminary determination on the I.U.M. tax. Petitioners argue that the I.U.M. is a direct tax because it is assessed on the value of the ore at the time of extraction. Additionally, the I.U.M. exempts mineral firms from paying social security and property taxes on their minerals. Finally, the petitioners argue that, even if the I.U.M. were an indirect tax, it fails to meet the Department's linkage test for an allowable rebate of indirect taxes.

Department's Position. We have reversed our preliminary determination and now find the lower I.U.M. tax upon exports not to be countervailable. We found that this tax was an indirect tax and, furthermore, that payment of the I.U.M. did not exempt the firm from any direct tax liabilities (see the program description in this notice). As to the linkage test, this program is similar to but is *not* a rebate of indirect taxes. It is a partial exemption of the indirect tax itself. As such, it is automatically linked.

Comment 12. Petitioners argue that the Department's methodology in calculating the income tax exemption for export earnings, *i.e.*, allocating the benefit to the period in which the tax is filed (thus, in effect, lagging a year), is incorrect. They argue that the Department should calculate the value of the benefit by allocating the benefit to exports in the year the benefit was earned (current basis). Petitioners assert that calculation on a current basis is consistent with the policy of the countervailing duty statute, which is to eliminate the distortion of market forces caused by the subsidies, because the current basis countervails precisely the amount of subsidy conferred on any particular export.

They further argue that, with respect to this program in particular, Brazilian tax and accounting practices have changed, thus eliminating the original reasons for using a lagged calculation. In the past, the Department lagged this program because inflation reduced the value of the benefit between the time the benefit was earned and the time it was received. Now, however, the Brazilian government indexes the firm's tax liabilities. Thus, the benefit is no longer affected by inflation. Further, CVRD accrues its tax liability on a current basis in its accounts. Therefore, the company arguably knows its tax liability during the fiscal year, allowing it to account for the benefit in its export prices on a current basis.

Finally, petitioners argue that, in this case, all parties have admitted each shipment receives a specific, verifiable subsidy. By allowing CVRD to renounce the benefit only on shipments of iron ore pellets to the United States in the suspension agreement, the Department has recognized that each shipment "generates a discrete subsidy that is directly tied to that shipment and can be calculated with precision." Therefore, it is appropriate to apply that discrete subsidy to the shipment generating it.

Department's Position. We disagree. For five years it has been the Department's policy to lag income tax benefits. The statute requires us to countervail the actual net subsidy received. Since in an income tax program, the actual subsidy cannot be known until after the tax return is filed, our method appropriately allows us to base our calculation on the actual subsidy. This is consistent with the statute.

Further, although a firm may accrue an income tax liability in its accounts during the fiscal year, this is at best an estimate of the firm's final tax liability. That does not allow the firm to know the extent of any tax exemption. We addressed this issue in the final results of administrative review on float glass from Italy (48 FR 25255, June 6, 1983). At that time we stated:

> [w]hether the exemption is partial or complete, the exact benefit for a particular tax year cannot be known until the firm's books have been closed, because it is only then that the firm can determine with finality its taxable income. The Department, therefore, maintains that it must allocate income tax benefits to the year in which the total income is knowable.
>
> To accept argument that benefits should be considered conferred when a firm is able to adjust its cash flow or business efforts with regard to estimated tax liabilities would saddle the Department with the prohibitive burden of determining exactly when each company under review may or should be able to account for potential benefits, and determining when subsequent reconciliations are possible. We doubt the wisdom of attempting such a subjective approach.

Additionally, the Department has not found the tax program in this case to be shipment specific. While eligibility for the exemption is dependent on exports of certain products, the value of the benefit is dependent on the firm's overall profitability (not the profitability of any specific shipment). Thus, no particular shipment generates a discret, calculate subsidy amount. However, by removing a product from eligibility for the benefit, we remove the effect the subsidy would have on that product. Thus, while it is reasonable to allow CVRD to renounce the eligibility of shipments of iron ore pellets to the United States, this in no way implies that the benefit is shipment specific.

Comment 13. Petitioners argue that if the Department does continue to lag the benefits from the income tax exemption, it must index that exemption to reflect the true value of the subsidy. Even Brazilian tax law requires that the tax liability be indexed. The Departmen, should do the same.

Department's Position. We agree. Because indexation of tax liabilities is required under Brazilian law, we have indexed the exemption according to that system.

Comment 14. Petitioners argue that the Department used the wrong denominator in its calculation of the income tax benefit. The program is product specific because only those exports containing at least a 50 percent value added over the raw mineral ore are eligible. The petitioners contend that, because the program is product specific, the Department should use exports of only the product under investigation as the denominator.

Department's Position. We agree that we should use exports of only those products eligible for the exemption as our denominator and have done so. However, products other than pellets are eligible for the exemption, so our denominator includes more than just pellet exports.

Comment 15. Petioners contend that, since the response did not contain the requested reconciliation between financial statements and the claimed taxable profit, the Department should use the best information available to find the profit to which the tax exemptions applied. Petitioners contend that the best information on profit should be the pre-tax profit from the consolidated income statement in the annual report rather than the figure supplied in the response.

Department's Position. In our questionaire, under this program, we requested the profit figure to which the exemption is applied. Respondents provided that figure and we verified its accuracy. Therefore, there is no reason to use best information in this situation.

Comment 16. Petitioners argue that the Department used an incorrect tax rate in calculating the income tax benefit. There is a 10 percent surcharge on any taxable profit in excess of 60,000 times one ORTN. Thus, the true tax rate for the income exemption is 45 percent, not 35 percent.

Department's Position. As described in the program description section of this notice, we used CVRD's effective corporate income tax rate. Thus, we

considered both the additions to (including the surcharge) and deductions from the base rate to find an effective tax rate.

Comment 17. Petitioners support the Department's preliminary decision not to accept the investment credits as a reduction in the income tax rate. The petitioners state that there are three reasons for not accepting the investment credits: the use of the tax incentives does not reduce the actual benefit of the tax subsidy; the incentives reduce tax owed, not tax rates; and considering it would be impractical administratively.

Department's Position. As stated in our response to Comment 16, we used the surcharges and credits to find the effective tax rate. This includes the investment credits. CVRD has demonstrated that it has earned returns from these investments. Therefore, we have determined that the investment credits should not be considered a part of the firm's corporate income tax liability and have deducted the investment credits in calculating CVRD's effective tax rate.

Concerning the petitioner's argument that the investment credit reduces the tax owed, not the tax rate, this is correct in normal terms. However, an effective tax rate compares the actual tax owed to the total taxable profit to find the percentage paid out in taxes. Finally, it is no more of an administrative burden to consider the investment credits than it is to consider the excess profit surcharge.

Comment 18. Petitioners argue that we should determine that the investment credits allowed on income tax provides a countervailable benefit. They argue that these credits are not generally available because certain industries are exempted from the program.

Department's Position. We disagree. This program has been determined to be available to more than a specific enterprise or industry or group of enterprises or industries in past cases. See our "Final Affirmative Countervailing Duty Determination: Carbon Steel Plate from Brazil" (48 FR 2588, January 20, 1983).

Comment 19. Petitioners contend that the Department should investigate government equity infusions into CVRD. Since the time of the decision not to initiate on equity infusions, the petitioners have submitted two new equity allegations. One concerned government purchases in the secondary market; the other, a decision by the government to reinvest its dividends in the company.

Department's Position. As stated in our notice of intiation, government equity investments are not countervailable *per se*. There must be a showing that such investments are inconsistent with commercial considerations. There is no evidence to believe that such a situation exists with regard to CVRD whether the government is investing new funds or reinvesting its dividends. Regarding the Brazilian government's purchase of CVRD's shares in the secondary market, any benefit that could possibly arise would accrue to the owners of those shares, not to CVRD.

Comment 20. Petitioners allege that Decree Law No. 1940 expressly exempts exports from payment of FINSOCIAL (one of the social security taxes) and that CVRD receivers a countervailable benefit from this. If CVRD did not demonstrate at verification that it refused to take advantage of this export subsidy, then the Department should determine that a subsidy was received through this program.

Department's position. This allegation was submitted only five days before the suspension of investigation and after verification. Therefore, the Department will not consider if for the final determination. If appropriate, it will be considered in any eventual review under section 751 of the Act.

Comment 21. Petitioners state that the import duty exemptions under Decree-Law 1287, found during verification, should be determined to be countervailable. Further, because the exemption reduces the cost to CVRD of capital equipment, the benefit should be treated as a grant from the Brazilian government to CVRD. As such, it should be allocated over the average useful life of equipment. The Department should look at the exemptions received in the last 10 years to countervail the total subsidy under the Department's grant methodology.

Department's Position. We agree that the exemption is countervailable. However, our practice is to allocate the benefits of such exemptions to the year in which the exemptions occur, because of their recurring nature. Therefore, in calculating the subsidy, we have considered only exemptions that occurred during the review period.

Comment 22. Petitioners argue that the Department did not adequately examine the credits against IPI liability program under Decree 83,263. Petitioners argeue that this program reduces the cost of capital equipment and should be treated as a grant. As such, it is not sufficient for the Department to verify that this program was not used during the review period. The Department should have verified whether it was used anytime in the last 10 years.

Department's Position. We disagree. As with the duty exemptions disucssed in Comment 21, we would not allocate benefits from this program over time. Therefore, it is appropriate to consider only benefits received during the review period.

Comment 23. Petitioners argue that the Department should have investigated their allegation that CVRD's exports of iron ore pellets benefit from a program allowing accelerated depreciation for vessels constructed in Brazil. They argue that CVRD wholly owns DOCENAVE, a shipping firm, and therefore receives benefit from DOCENAVE's accelerated depreciation which constitutes a countervailable subsidy.

DOC Position. We disagree. This program is specifically tied to a product other than the product under investiagion. CVRD and DOCENAVE file separate tax returns and we verified that CVRD did not claim any accelerated depreciation under this program. DOCENAVE, *per se*, is not subject to this investigation. To the extent that the accelerated depreciation would create preferential transport prices for the ore transported in DOCENAVE's ship, we would consider this. However, petitioners neither provided any information that preferential prices existed nor alleged that they existed. Further, the accelerated depreciation is available to all owners of Brazilian made ships. Thus, there is no reason to believe that DOCENAVE charges different freight rates to CVRD than to other firms or that it charges different freight rates than other shipping firms do. Therefore, there was no reason to investigate this program.

Respondents' Comments

Comment 1. The Government of Brazil and CVRD ("the respondents") argue that the Department incorrectly determined that I.U.M. tax to be countervailable in the preliminary determination. They argue that the I.U.M. tax is an indirect tax and that the payment of the I.U.M. does not exempt a firm from any of its direct tax obligations. Therefore, any non-excessive rebate does not constitute a countervailable subsidy.

DOC Position. We verified tht the I.U.M. is an indirect tax paid at the time of transfer of the product. Further, we verified that payment of the I.U.M. did not exempt CVRD from any of its direct tax liabilities. Since, under both U.S. law and the General Agreement on Tariffs and Trade, a government may rebate or exempt firms from paying indirect taxes

borne by exported products, we agree with respondents' argument that the lower tax rate the company pays on its exports does not confer a countervailable subsidy.

Comment 2. Respondents argue that the Department overstated the benefit from the income tax exemption for export earnings. Brazilian federal tax laws permit corporations to invest 26 percent of taxes owed in certain specified corporations. The Brazilian government claims that this provision results in an effective reduction of the corporate income tax rate, which directly diminishes the benefit from the income tax exemption. Additionally, respondents have shown during verification that CVRD received dividends from these investments.

DOC Position. We agree. We verified that Brazilian federal tax laws permit corporations to invest 26 percent of their taxes owed in certain specified corporations. We also verified that CVRD did use the amount allowed to invest in certain programs. Further, we verified that CVRD has received dividends from these investments. Therefore, in computing the income tax exemption, we have calculated CVRD's effective tax rate, taking into account the 35 percent base tax rate, the 10 percent surcharge, the 26 percent of taxes eligible for investment and all other deductions and surcharges claimed by CVRD. See also our response to petitioner's comment 16.

Comment 3. Respondents claim that benefits derived from income tax exemption for export earnings should be allocated over total revenue rather than export revenue. Under this program, a Barzilian exporter receives an exemption from income tax liabilities at the end of the fiscal year based upon a ratio of export revenue to total revenue, provided that the firm has made an overall profit. The respondents argue that, because the determining factor in a firm's eligibility for this benefit is its overall profitability for a given year, the benefit accrues to the operations of the whole firm and not just to exports. Thus, by allocating the benefits only to export revenue, the Department overstates the value of the subsidy.

DOC Position. We disagree. When a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received is tied directly or indirectly to the firm's level of exports, that program confers an export subsidy. The fact that the firm as a whole must be profitable to benefit from the program does not detract from the program's basic function as an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenues instead of total revenues.

Comment 4. Respondents argue that indexation of the income tax exemption would overstate the amount of the subsidy. Because indexation does not occur until the year in which tax is paid, it has no effect on the amount of tax liability or on the values of any of the amounts used to calculate the exemption.

DOC Position. We disagree. The Department has maintained that it must allocate tax benefits to the year in which the the total income and tax liability are known. Therefore, the benefits of the income tax exemption are allocated to the year in which the taxes are paid. Brazilian law requires that the tax liability be fully indexed through ORTN, and we have used the indexed figure in calculating the benefits.

Comment 5. Respondents support the Department's decision to calculate the benefits from the income tax exemption for export earnings based on the year in which the tax return is filed. They argue that any benefits from the program are received when the tax savings occur, which happens with the filing of the tax return. Further, the Department's methodology is consistent with past practice. Finally, they refute the petitioners' contention that CVRD knows its tax liability during the fiscal year, prior to filing the tax return, because even if CVRD keeps a running estimate during the fiscal year, it cannot anticipate all the factors that might affect its overall profitability. For example, the 1979 and 1983 maxi-devaluations seriously reduced most firms' profits in those years.

DOC Position. We agree. See our response to Petitioners' Comment 12.

Comment 6. Respondents argue that the income tax exemption for export earnings does not provide a shipment specific benefit. They state that the exemption is tied to the total operations of the company. Further, they state that, contrary to petitioners' assertions, they never argued that the program was shipment specific, but merely that removal of those exports from the products included in export earnings would eliminate the effect of the benefit on exports to the United States.

DOC Position. We agree. See our response to Petitioners' Comment 12.

Comment 7. Respondents argue that the 7.5 percent I.U.M. charged on exports should be considered an allowable offset for the income tax exemptions. The law allows the Department to deduct "any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the subsidy" (19 U.S.C. 1677(6)(a)). Since the firm must pay the 7.5 percent I.U.M. tax on all iron ore product exports and must export to qualify for the income tax exemption, the I.U.M. tax should be considered a "similar payment" as discussed above.

DOC Position. We disagree. The I.U.M. is an indirect tax, payable on both domestic and export sales. Just because the rate for export sales is different from the rate for domestic sales does not qualify the I.U.M. tax charged on exports as something different from the I.U.M. tax charged on domestic sales.

Comment 8. Respondents argue that Decree-Law 6,404 has no impact on a mixed-economy company's ability to borrow and does not act as a government loan guarantee. Under Brazilian law, a commercial guarantee creates joint and several liability. The government's obligation under D.L. 6,404 to creditors of mixed-economy companies is not one of joint or several liability since recourse to the government may only occur after the attachment and sale of all the company's available assets. Further, under international commercial practice the liability of a government for the debts of a mixed-company is not treated as a commercial guarantee.

DOC Position. We agree; see our response to Petitioners' Comment 8.

Comment 9. Respondents support the Department's preliminary determination not to considersubsidies to the Carajas mine project because Carajas is not, and will not be, producting iron ore pellets. It was demonstrated during verification that Carajas has no intention of producting pellets for the following reasons: the iron content is insufficient to allow the natural lumpy ore to be sold for use in blast furnaces; pelletizing the ore would be uneconomical; and, building pelletizing facilities would violate CVRD's loan commitments to the World Bank.

DOC Position. We agree. Since the Carajas subsidies are for the Carajas project only, as alleged by the petitioner, and since we verified that CVRD does not intend to produce pellets a Carajas, we did not consider these programs.

Comment 10. Respondents support the Department's definition of the scope of the investigation. The definition is consistent with the product description in the petition. Further, the product description need not be defined in reference to a specific tariff classification. Finally, they argue that the ITC's preliminary injury determination covered only processed iron ore pellets. Therefore, there is no

preliminary injury determination on natural ore and the Department does not have the authority to make a determination on a product without a preliminary injury determination existing on that product.

DOC Position. See our response to Petitioners' Comment 5.

Comment 11. Respondents argue that, in calculating the subsidy from the income tax exemption, the Department should calculate the tax liability as if CVRD had taken all deductions allowed under the Brazilian tax code. This should be compared to their actual liability to find the subsidy.

DOC Position. Respondents themseves have submitted that "the most practical way of calculating the benefit of a tax subsidy is to measure the difference between tax paid and tax otherwise payable *but for* the exemption." We have done just that. We do not take into account all deductions allowed under the Brazilian Tax Code if these deductions have not been taken during the review period.

Comment 12. Georgetown Industries, a party to the proceeding, supports the Department's exclusion of low-silica pellets for use in electric furnaces from the scope of this investigation. Low-silica pellets have a different chemical composition and different end use from the pellets covered by the investigation. Additionally, petitioners have submitted that there is no domestic production of this product and that to use the imported low-silica pellets in a blast furnace would require adjustments to the furnace. For these reasons, Georgetown Industries argues that low-silica pellets should not be included in the scope.

DOC Position. We agree. See our response to Petitioners' Comment 7.

Final Negative Determination of Critical Circumstances

Petitioners allege that critical circumstances exist within the meaning of section 703(e)(1) of the Act, with respect to iron ore pellets from Brazil. In determining whether critical circumstances exist, we examine whether there is a reasonable basis to believe or suspect that:

(a) the alleged subsidy is inconsistent with the Agreement; and

(b) there have been massive imports of the subject merchandise over a relatively short period.

In this case, information on the record does not indicate that imports of the merchandise under investigation were massive over a relatively short period within the meaning of section 703(e)(1) of the Tariff Act of 1930. Therefore, we determine that critical circumstances do not exist with respect to iron ore pellets from Brazil.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During this verification, we followed normal procedures, including meetings and inspection of documents with government officials, and inspection of the records of the company exporting the merchandise under investigation to the United States.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all unliquidated entries of iron ore pellets from Brazil entered, or withdrawn from warehouse, for consumption, on or after March 31, 1986. As of the date of publication of this notice in the **Federal Register**, the Customs Service should require a cash deposit or bond of 7.94 percent *ad valorem* for each such entry of this merchandise. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non privileged and non confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry 45 days after the date of publication of this notice. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that injury exists, we will issue a contervailing duty order, directing Customs officers to assess a countervailing duty on iron ore pellets from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of the suspension of liquidation as indicated in the "Suspension of Liquidation" section of this notice, in accordance with sections 701(a)(1) and 751 of the Act.

This notice is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Paul Freedenberg,

Assistant Secretary for Trade Administration.

June 10, 1986.

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BILLING CODE 3510-DS-M

President's Export Council; Open Meeting

A meeting of the President's Export Council's Trade Expansion Subcommittee will be held July 18, 1986, 10:00 a.m. at the Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC. The Council's purpose is to advise the President on matters relating to United States export trade.

Agenda: Opening remarks, Eximbank funding, United States and Foreign Commercial Service, mixed credits, small business exports, export trading companies, and discussion of future meeting plans.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Amy Dale (203) 377-1125, Room 3213, U.S. Department of Commerce, Washington, DC 20230.

Dated: June 11, 1986.

Henry P. Misisco,

Director, Office of Planning and Coordination.

[FR Doc. 86-13633 Filed 6-16-86; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Dr. Bruce R. Mate

On March 28, 1986, notice was published in the **Federal Register** (51 FR 10650) that an application had been filed by Dr. Bruce R. Mate, Oregon State University, Hatfield Marine Science Center, Newport, Oregon 97365, for taking humpback whales by harassment and radio-tagging.

Notice is hereby given that on June 5, 1986, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1)

was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policis set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Dated: June 9, 1986.

Samuel W. McKeen,

Chief of Management and Budget Staff, National Marine Fisheries Service.

[FR Doc. 13617 Filed 6–16–86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License, Wild Well Control, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Wild Well Control, Inc., having a place of business at 22730 Gosling Road, Spring, TX 77389 an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Method and Apparatus for Suppression of Well Blowout Fires" U.S. Patent Application S.N. 6–773,285. The 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 Papan Devnani, 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. 86–13618 Filed 6–16–86; 8:45 am]

BILLING CODE 3510-04-M

Notice of Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to ARKO Laboratories, Ltd., having a place of business in Jewel, Iowa, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Propagation of Hemorrhagic Enteritis Virus in a Turkey Cell Line and Vaccine Produced, "U.S. Patent 4,388,298. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

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. 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 Douglas J. Campion, 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. 86–13611 Filed 6–16–86; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of committee: Armed Forces Epidemiological Board Subcommittee on Disease Control/Human T-Lymphotropic Virus Type III Positivity.

Date of meeting: June 30, 1986.

Time: 10 a.m.–3 p.m.

Place: Walter Reed Army Institute of Research, Washington, D.C.

Proposed agenda: Prophylaxis of drug resistant malaria; immunization of health care workers against hepatitis B; issues related to asbestosis in the Armed Forces; update on Human T-Lymphotropic Virus Type III Positivity; Vaccination against Japanese B Encephalitis.

2. This meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG–AFEB, Room 2D455, Pentagon, Washington, DC 20310–2300, (202) 695–9115.

Dated: May 23, 1986.

Robert A. Wells,

Colonel, USA, MSC, Executive Secretary.

[FR Doc. 86–13749 Filed 6–16–86; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Defense Science Board Summer Study on U.S. Forces Air Defense in NATO; Advisory Committee Meetings

SUMMARY: The Defense Science Board Summer Study on U.S. Forces Air Defense in NATO will meet in closed session on July 8, 1986 in the Systems Planning Corporation, Rosslyn, 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 Summer Study will examine current U.S. air defense capabilities in Europe, joint plans and organizations, and relevant new technology and equipment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 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.

June 11, 1986.

[FR Doc. 86–13608 Filed 6–6–86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Technological and Operational Surprise; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Technological and Operational Surprise in the U.S.-Soviet Military Competition will meet in closed session on July 1–2, September 11–12, October 20–21, and December 3–4, 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 these meetings this Task Force will evaluate the potential for technological and operational surprise in the U.S.-Soviet military competition.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Panel meetings, 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.

June 11, 1986.

[FR Doc. 86–13607 Filed 6–16–86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Air Force Activities for Conversion to Contract

ACTION: Notice.

The Air Force recently determined that the Television Ordnance Scoring System (TOSS) function at MacDill AFB, FL; Cannon AFB, NM; England AFB, LA; Luke AFB, AZ; Mt Home AFB, ID will be converted to contract.

For further information contact Ms. Jean Webster, HQ AFCC/XPMQ, Scott AFB, IL, telephone (618) 256–5255.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–13585 Filed 6–16–86; 8:45 am]

BILLING CODE 3910-01-M

DELAWARE RIVER BASIN COMMISSION

Commission Meetings and Public Hearings

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Monday, June 23, 1986 beginning at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey to consider the following application.

New Jersey Department of Transportation (Trenton Complex) D–84–35 CP. An application involving the disturbance of wetlands associated with the interconnection of Routes I–195, I–295, 29, and 129 southeast of Trenton in Mercer and Burlington Counties, New Jersey. The original application included the dredging of 400,000 cubic yards of material for construction fill for the project; however, the dredging proposal has been completely deleted from this application. The project also includes the construction of a 1450 foot bridge across Crosswicks Creek and adjacent wetlands. The applicant has been required by the U.S. Army Corps of Engineers to develop an acceptable wetland mitigation plan in response to the proposed filling of 49.2 acres of wetlands.

Documents relating to this application may be examined at the Commission's offices. A preliminary docket will be available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

The Commission will hold a public hearing on Wednesday, June 25, 1986, beginning at 10:00 a.m. at the Colonial Hotel and Motor Lodge, Ocean Street, Cape May, New Jersey. The hearing will be a part of the Commission's regular business meeting which is open to the public.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or section 3.8 of the Compact:

1. *George A. Coombs & Sons D–81–10 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 15 million gallons (mg)/30 days of water to the applicant's farm operation from an irrigation well without an increase in existing allocation. Commission approval on September 3, 1981 was limited to five years and will expire unless renewed. The project is located in Upper Pittsgrove Township, Salem County, New Jersey.

2. *Warminster Township Municipal Authority D–86–19 CP.* An application for the expansion of the applicant's sewage treatment plant to serve Warminster Township, Bucks County, Pennsylvania. The existing tertiary plant treats 4.58 mgd of domestic wastewater. The proposed expansion will increase the treatment capacity to 8.18 mgd. The expanded plant is designed to serve the projected flow through the year 2004. The treated effluent will continue to discharge to Little Neshaminy Creek which is adjacent to the facility.

3. *Crystal Water Supply Company, Inc. D–86–22 CP.* An application for approval of a ground water withdrawal project to supply up to 11.23 mg/30 days of water to the applicant's distribution system from new Wells A and B. The project is located in the Town of Thompson, Sullivan County, New York.

4. *Clair Taylor D–86–34.* An application for approval of a ground water withdrawal project to supply up to 15 mg/30 days of water to the applicant's irrigation system from two new wells, to increase the existing withdrawal limit from all wells to 27 mg/30 days, and to renew the approval of an existing well which has expired. The project is located in Lawrence Township, Cumberland County, New Jersey.

5. *Borough of Media D–86–42 CP.* An application for a sewage treatment plant upgrading and expansion project to serve the Borough of Media and a portion of Upper Providence Township in Delaware County, Pennsylvania. The existing 1.2 mgd facility will be modified to process a design average sewage flow of 1.8 mgd. The proposed plant is designed to serve 18,000 persons through the year 2000. After secondary treatment, the wastewater will be discharged to the adjacent Ridley Creek at River Mile 83.80–7.8 through the existing effluent outfall.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary

June 10, 1986.

[FR Doc. 86–13622 Filed 6–16–86; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

National Petroleum Council; U.S. Refinery Capability Task Group; Meeting

Notice is hereby given that the U.S. Refinery Capability Task Group will meet in June 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 U.S. Refinery Capability Task Group will be addressing a current study of the capability of the U.S. refining industry. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The U.S. Refinery Capability Task Group will hold its fifteenth meeting on Thursday and Friday, June 26–27, 1986, starting at 9:00 a.m., in the Corpus Christi Room of the Holiday Inn, 15202 Windward Drive, Corpus Christi, Texas.

The tentative agenda for the U.S. Refinery Capability Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review of the work of the Task Group.
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 U.S. Refinery Capability 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 U.S. Refinery Capability 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 June 9, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–13628 Filed 6–16–86; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council; Worldwide Refining Trends Task Group; Meeting

Notice is hereby given that the Worldwide Refining Trends Task Group will meet in June 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 Worldwide Refining Trends Task Group will be evaluating trends of the refining industry worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Worldwide Refining Trends Task Group will hold its ninth meeting on Wednesday, June 25, 1986, starting at 9:00 a.m., in the Conference Room at the corporate headquarters of the Standard Oil Company, 200 Public Square, Cleveland, Ohio.

The tentative agenda for the Worldwide Refining Trends Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review and discuss the draft report of the Worldwide Refining Trends Task Group.
3. Review and discuss the entire draft report.
4. 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 Worldwide Refining Trends 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 Worldwide Refining Trends 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 June 10, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–13629 Filed 6–16–86; 8:45 am]

BILLING CODE 6450–01–M

Procurement and Assistance Management Directorate; Grant Award to University of North Dakota

AGENCY: Department of Energy, DOE.

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: Pursuant to 10 CFR Part 600.7(b) of the DOE Financial Assistance Rules, DOE announces that it has awarded a grant to the University of North Dakota, Great Plains forum on Energy and Minerals Management and Policy Analysis, in the amount of $10,600 in partial support of the International Conference on the Development of Alternative Energy Sources and the Lessons Learned since the Oil Embargo.

Procurement request number: 01–86FE61068.000

Project scope: This action provides financial assistance to the University of North Dakota for the International Conference on the Development of Alternative Energy Sources and Lessons Learned since the Oil Embargo.

The objective of the conference is to provide a forum to assess the status of energy sources that are, or may soon be, viable alternatives to crude oil and its derivatives. The resultant scientific, technical, and policy papers, developed and published, will be used to formulate future fossil energy research and development programs and budgets.

As DOE is vitally interested in pursuing research in the area of alternative energy sources, it has determined that partial support of this conference, conducted and hosted by the University of North Dakota on a restricted eligibility basis, is appropriate.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Neil Weiss/Glen R. Taranto, MA–452.1, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252–1046.

Issued in Washington, DC, on June 9, 1986.

David G. Newman,

Director, Office of Procurement Operations.

[FR Doc. 86–13676 Filed 6–16–86; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the return of 80 kilograms of irradiated research reactor fuel of United States

origin from the Siloe reactor in France for reprocessing and storage in Department of Energy facilities. The return of highly enriched uranium to the United States is consistent with United States nonproliferation policy in that it serves to reduce the amount of highly enriched uranium abroad.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 11, 1986.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-13627 Filed 6-16-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-523-000 et al.]

Alamito Corporation et al.; Electric Rate and Corporate Regulation Filings

June 11, 1986.

Take notice that the following filings have been made with the Commission.

1. Alamito Corporation

[Docket No. ER86-523-000]

Take notice that on June 6, 1986, Alamito Company ("Alamito") tendered for filing a letter agreement dated November 1, 1985, between Alamito and Tucson Electric Power Company ("Tucson"). Alamito states that the agreement does not change any of the rates, terms, or conditions pursuant to which Alamito is selling and will continue to sell power to Tucson pursuant to the 12 Year Power Sale Agreement, a filed FERC rate schedule.

Alamito further states that the November 1, 1985 letter agreement clarifies the prior agreement of the parties with respect to the termination of the 12 Year Power Sale Agreement in the event of any of Alamito's existing generation. Alamito further states that the letter agreement also provides that Tucson will not attempt to resolve by litigation until December 1, 1987, certain disputes Tucson has with Alamito regarding that agreement, and that, in return, Alamito has agreed to waive various defenses of a statute of limitations nature which it might not otherwise have had. Alamito requests that the filing be permitted to become effective on November 1, 1985.

Comment date: June 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corporation, Citizens Utilities Company, Franklin Electric Light Company, Green Mountain Power Corporation, Vermont Marble Company

[Docket No. EC86-21-000]

Take notice that on June 9, 1986, Central Vermont Public Service Corporation ("Central Vermont"), Citizens Utilities Company ("Citizens") Franklin Electric Light Company ("FELCO") Green Mountain Power Corporation ("Green Mountain") and Vermont Marble Company ("Vermont Marble") filed a joint application seeking authority to acquire 82,272 shares of Vermont Electric Power Company's ("VELCO") Class C Preferred Stock.

VELCO is proposing to issue 100,000 shares of Class C Preferred Stock, $100 par value, for cash at par in order to provide capital so it can make a subsequent capital contribution to its wholly owned subsidiary the Vermont Electric Transmission Company, Inc. ("VETCO"). VETCO will use the proceeds of its stock sale to finance its continuing construction program.

Central Vermont, Citizens, FELCO, Green Mountain and Vermont Marble proposes to purchase 82.272% of the Class C Preferred Stock to be issued by VELCO, in sum 82,272 shares. It is intended that Central Vermont purchase 46.624% of the shares issued by VELCO (46,624 shares), Citizens purchase 7.318% of the shares (7,318 shares), FELCO purchase .185% of the shares (185 shares), Green Mountain purchase 30.02% (30,020 shares) and that Vermont Marble purchase 1.125% (1,125 shares), which is proportionate to their distribution of kWh in Vermont in 1980.

Comment date: June 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Power and Light Company

[Docket No. ER86-524-000]

Take notice that Iowa Power and Light Company ("Iowa Power"), on June 9, 1986, tendered for filing an Amendment to Transmission Service Agreement ("Amendment") between Iowa Power and Central Power Cooperative ("CIPCO"). The proposed changes would increase revenues from jurisdictional sales and service by $6,904.56 based on the twelve month period ending December 31, 1985.

The amendment reflects an assignment of Eastern Iowa Light and Power Cooperative's existing contracts with Iowa Power to CIPCO and provides for CIPCO's use of certain portions of Iowa Power's electric transmission system at a proposed increased rate to recover increased costs incurred by Iowa Power in its fixed costs, at the Hills substation terminal, and as a result of storm damage incurred on its Montezuma-Hills transmission line.

Copies of the filing were served upon CIPCO and the Iowa State Commerce Commission.

Comment date: June 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket No. ER86-522-000]

Take notice that on June 6, 1986, Idaho Power Company ("Idaho Power") tendered for filing the Average System Cost (ASC) determined by the Bonneville Power Administration ("BPA"), BPA's written ASC report, and Idaho Power's ASC schedules (Appendix I) for Idaho Power's Idaho exchange jurisdiction. Idaho Power also submitted its agreement with and/or objections to BPA's Average System Cost determination.

The ASC rates filed have been determined pursuant to the Revised Average System Cost Methodology approved by the Commission in its Order No. 400 issued October 1, 1984 in Docket No. RM84-16-000, and section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 830-839h). This act provides for the exchange of electric power between Idaho Power and BPA for the benefit of Idaho Power's residential and farm customers.

A copy of the filing has been served upon BPA and all parties to Idaho Power's Appendix 1 filing with BPA.

Comment date: June 25, 1986, in accordance with Standard Paragraph E at the end of this document.

5. New England Power Company

[Docket No. ER85-724-002]

Take notice that on June 6, 1986, New England Power Company (NEP) filed a Compliance Refund report and supporting documentation that effectuates the terms of a Settlement Agreement between NEP and Public Service Company of New Hampshire in this document.

NEP states that appropriate refunds including interest under the above-referenced Settlement Agreement have been completed.

Comment date: June 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER86-393-000]

Take notice that on June 6, 1986, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing additional information relating to an agreement between Niagara Mohawk and New York State Electric and Gas Corporation (NYSEG).

Niagara Mohawk states that this information provides additional documentation for the rate of transmission of hydroelectric power and energy by Niagara Mohawk over its existing tramsmission facilities for NYSEG.

Niagara Mohawk states that copies of the filing were served upon NYSEG and upon the Public Service Commission of the State of New York.

Comment data: June 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER86-349-000]

Take notice that on June 6, 1986, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing additional information relating to an agreement between Niagara Mohawk and the Power Authority of the State of New York (PASNY).

Niagara Mohawk states that this information provides additional documentation for the rate for transmission of hydroelectric power and energy by Niagara Mohawk over its existing transmission facilities from PASNY to the City of Niagara Falls.

Niagara Mohawk states that copies of the filing were served upon PASNY and upon the Public Service Commission of the State of New York.

Comment date: June 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER86-525-000]

Take notice that on June 9, 1986, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company ("Southern Companies"), tendered for filing Amendment No. 3 to an interchange contract between Southern Companies and Jacksonville Electric Authority.

The subject amendment to the interchange contract revises the terms and conditions under which Southern Companies and Jacksonville Electric Authority will price economy energy transactions between their respective electric systems. The amendment provides for an additional pricing mechanism which allows the parties to negotiate the price of economy energy transactions on an experimental basis.

Comment date: June 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-13609 Filed 6-16-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case Nos. WH-002 and WH-004]

Energy Conservation Program for Consumer Products; Modification of a Decision and Order Granting Waiver From Water Heater Test Procedures to Bock Water Heaters, Inc.

AGENCY: Department of Energy.

ACTION: Modification of a decision and order.

SUMMARY: The Decision and Order [Case No. WH-002] granting Block Water Heaters Inc., a waiver for its Model 32E oil-fired water heaters from the existing DOE water heater test procedures is hereby modified. The modification includes technical corrections and extends coverage of the Bock Decision and Order to Bock's Model 32 PG gas-fired water heater. The extended coverage is in response to a separate Petition for Waiver filed by Bock Water Heaters Inc. [Case No. WH-004].

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9513.

SUPPLEMENTARY INFORMATION: In accordance with subparagraph (iii) of Bock's Decision and Order (50 FR 47106), notice is hereby given of the issuance of modification to the Decision and Order set out below. In the Decision and Order, Bock has been granted a waiver for its Model 32E oil-fired water heaters, permitting the company to use a "simulated use" test method in lieu of the "cold-start recovery" test method in the existing test procedure. Today's notice extends coverage to the Model 32 PG gas-fired water heater and makes some technical corrections to the Bock Decision and Order.

Issued in Washington, DC, June 3, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Modification of a Decision and Order of the Department of Energy Office of Conservation and Renewable Energy

In the Matter of: Bock Water Heater, Inc.

[Case Nos. WH-002 and WH-004]

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3266, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

Section 430.27 allows the Department of Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy

consumption characteristics as to provide materially inadequate comparative data. 45 FR 64108 (September 26, 1980).

Bock Water Heaters, Inc. (Bock), filed a "Petition for Waiver" in accordance with § 430.27 of 10 CFR Part 430. DOE published in the **Federal Register** the Bock petition. 50 FR 24286 (June 10, 1985). Bock received a Decision and Order which waived the existing "cold start" recovery efficiency test methodology for Bock Model 32E oil-fired water heaters and allowed Bock use of a "simulated use" test method as Bock requested. 50 FR 47106 (November 15, 1985).

By separate notice, another manufacturer of water heaters, Ford Products Inc. (Ford), received an essentially identical Decision and Order regarding some Ford models of oil-fired water heaters. 50 FR 50678 (December 11, 1985).

By letter dated January 13, 1986, Bock filed an additional petition for waiver from the DOE test procedure for water heaters on the grounds that the procedure yields materially inaccurate estimates of the energy consumed by its Model 32 PG gas-fired water heater. DOE published in the **Federal Register** Bock's second petition. 51 FR 7622 (March 5, 1986). No comments were received.

Assertions and Determinations

Ford has objected to the "simulated use" test method specified in the Decision and Order issued by the Department for its high mass oil-fired water heaters. Ford asserts in its letter on January 13, 1986, that the starting temperature and consecutive draw schedule of the allowed test method are inappropriate for oil-fired water heaters, and results in inaccurate estimates of recovery efficiency of up to 10 percentage points. Further, Ford stated that this inappropriateness exists because the allowed test method was developed for heat pump water heaters. Ford suggested that it be allowed the use of the existing test procedure modified by a "warm" start method, i.e., where the start of the recovery efficiency test occurs when thermal equilibrium is reached.

By letter dated February 14, 1986, Bock responded to Ford objections. Bock contends the "simulated use" method is acceptable for testing oil-fired water heaters. Further, Bock does not agree with the magnitude of the possible inaccuracies stated in the Ford letter. Finally, Bock states that the "warm" start test method is far more complex than the "simulated use" method and does not show results which would be useable by the consumer as a comparison of operating characteristics.

DOE has asked the National Bureau of Standards (NBS) to investigate the Ford claims by testing a oil-fired water heater using the "simulated use" test method granted to Bock and Ford. The results of this investigation indicate that the method described in the Decision and Order is somewhat inappropriate regarding starting temperature for water heaters with high thermal mass. However, rather than prescribe a completely different test method, as Ford suggests, NBS recommended that the Ford Decision and Order be modified. Specifically, the requirement that the "simulated use" test begins immediately after cutout of the burner has been modified to require that the test begin after the mean tank temperature reaches thermal equilibrium. 51 FR 18659, May 21, 1986. For purposes of consistency, DOE believes it appropriate to modify the Decision and Order granted Bock (Case No. WH-002) to include this requirement.

Regarding Bock's "Petition for Waiver" concerning the Bock Model 32 PG gas-fired water heater, DOE agrees that this model is physically identical to the Bock Model 32E oil-fired water heater, and that a waiver should be granted to allow the use of the "simulated use" test method to determine recovery efficiency.

Consequently, in consideration of all of the above, today's notice modifies Bock's Decision and Order to: (1) Include the technical corrections made to the Ford Decision and Order, and (2) extend the coverage of the Bock Decision and Order to include Bock's Model 32 PG gas-fired water heater.

It is therefore ordered that:

(1) The October 30, 1985, Decision and Order granting a waiver from water heater test procedures to Bock Water Heater Inc. (50 FR 47106, November 15, 1985) is modified by revising the first sentence of paragraph (2) and the entire subparagraph (2)(i) as follows:

(2) Notwithstanding any contrary provisions of Appendix E of 10 CFR Part 430, Subpart B, Bock Water Heater, Inc., shall be permitted to test its Model 32E oil-fired water heater and its Model 32 PG gas-fired water heater on the basis of the test procedure specified in 10 CFR Part 430, with the modifications set forth below:

(i) Section 3.3.1 of Appendix E of CFR Part 430, is waived for Bock Water Heaters, Inc., and the company is permitted to use the following provision.

Recovery Efficiency for Oil or Gas Water Heaters by the Simulated Use Methods

(1) The simulated use test involves withdrawing water from the hot water outlet of the water heater in three separate consecutive water draws, each of 21.4 gallons ±0.5 gallon of water. The third water draw shall be of a sufficient volume to bring the total volume of water withdrawn from the water heater by means of these three water draws to 64.3 gallons ±0.5 gallon. Water shall be withdrawn at a rate of 3.0 ±0.25 gallons per minute for each of the three water draws. All water volume measurements shall be made using the water flow meter specified in section 2 of Appendix E of 10 CFR Part 430.

The simulated use test is begun when a thermal equilibrium is achieved at the maximum mean tank temperature. Begin the test by recording the mean tank temperature, in degress F, and by recording the time and the water meter reading. Start the first water draw and commence the measurement of electrical and fossil energy consumption of the water heater. During this draw and during all subsequent draws measure the temperature of the inlet and outlet water every minute commencing one minute after the start of the draw until the draw is complete. Immediately upon the conclusion of the first water draw record the water meter reading. Determine the first draw average inlet and outlet water temperatures (T_{ID1} and T_{TD1} respectively) by averaging the measured temperatures during the first draw. At the time a thermal equilibrium is achieved at the maximum mean tank temperature after the cutout following the recovery of the first water draw, begin the second water draw. Immediately upon the conclusion of the second water draw record the water meter reading. Determine the second draw average inlet and outlet water temperatures (T_{ID2} and T_{TD2} respectively) by averaging the measured temperatures during the second draw. At the time a thermal equilibrium is achieved at the maximum mean tank temperature after the cutout following the recovery of the second water draw, begin the third water draw. Immediately upon the conclusion of the third draw record the water meter reading and determine the third draw average inlet and outlet water temperatures (T_{ID3} and T_{TD3} respectively) by averaging the measured temperatures during the third draw. At the time a thermal equilibrium is achieved at the maximum mean tank temperature after the cutout following the recovery of third draw, record the

total amount of energy consumed by the water heater since the start of the test (Z_R), in Btu's (where 3,412 Btu equals 1 kilowatt-hours).

Determine the mean of the three outlet water temperature averages (T_{TWD}) and the mean of the three inlet water temperature averages (T_{IWD}), in degrees F. Determine the total amount of water withdrawn from the water heater over all three water draws (V_{WD}), in gallons, from the appropriate recorded water meter readings.

(2) This modification of waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by applicant. This modification of waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, DC, June 3, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-13675 Filed 6-16-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-3032-6]

In-Use Motor Vehicle Evaporative Hydrocarbon Emission Testing; Public Workshop

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop.

SUMMARY: On July 17, 1986, EPA will hold a public workshop to discuss in-use motor vehicle evaporative hydrocarbon emission testing procedures.

DATE: The workshop will be convened at 10:00 a.m., Thursday, July 17, 1986, and reconvene if needed at 9:00 a.m., Friday, July 18, 1986. Sessions will be adjourned at 5:00 p.m. each day or at a later time if necessary to complete the business of the workshop.

Requests to make presentations and a copy of the proposed presentation should be submitted to EPA by Thursday, July 10, 1986.

The record of the workshop will be left open for 30 days following the close of the workshop for subsequent written submissions and thus will close on Monday, August 18, 1986.

ADDRESS: The workshop will be held at the EPA Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105 (313-668-4200). Supporting materials relevant to this workshop are available in Public Docket No. EN-85-12. The docket is located in the U.S. Environmental Protection Agency, Central Docket Section, West Tower, Gallery I, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Tony Tesoriero, U.S. Environmental Protection Agency, Manufacturers Operations Division (EN-340F), 401 M Street, SW., Washington, DC 20460, (202-382-2510).

SUPPLEMENTARY INFORMATION:

Since 1981 EPA has performed evaporative emission testing of in-use motor vehicles to determine compliance with the evaporative hydrocarbon emission standard for enforcement purposes. On August 26, 1985, the Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA) filed a petition requesting that EPA commence rulemaking to modify and formalize the EPA test procedures applicable to light-duty vehicle evaporative hydrocarbon emissions for the in-use enforcement (Recall) programs. The specific issues discussed in the MVMA petition are: (1) The criteria used by EPA to select vehicles in the test sample, (2) the vehicle storage and handling procedures prior to emission testing, (3) the method by which vehicles are preconditioned prior to testing and (4) the treatment of non-fuel background emissions. A document prepared by EPA which examines MVMA's concerns in light of the information currently available to EPA is contained in the public docket. (General Motors Corporation (GM) and the Automobile Importers of America, Inc. subsequently adopted, by reference, MVMA's petition.)

EPA is conducting this public workshop to provide an open discussion with interested parties of the issues raised in the MVMA petition. EPA encourages all potential participants to present and discuss at the workshop factual information and data on these subject areas.

An agenda for this workshop will be placed in the public docket by Tuesday, June 17, 1986. Comments on additional items to be added to the agenda are solicited.

Dated: June 9, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-13614 Filed 6-16-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51623; FRL-3017-6]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 86-11076, beginning on page 18037, in the issue of Friday, May 16, 1986, make the following corrections:

1. On page 18038, in the first column, under "P86-986", fifth line, after "oral:" insert ">", and in the seventh line after "Inhalation:" insert ">".

2. On page 18039, in the third column, under "P86-1007", seventh line, after "oral:" insert ">".

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

BankAmerica Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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 acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 7, 1986.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105.

1. *BankAmerica Corporation*, San Francisco, California; to acquire 100 percent of the voting shares of The Oregon Bank, Portland, Oregon, and thereby indirectly acquire First Midland, Inc., Portland, Oregon, and Branch Properties, Inc., Portland, Oregon.

Applicant has also applied to acquire Orbanco Real Estate Services Company and Mortgage Creditcorp, both of Portland, Oregon, and thereby engage in mortgage lending and servicing in the states of Oregon, California, Idaho and Utah, pursuant to § 225.25(b)(1) of the Board's Regulation Y; Orbanco Securities Corporation, Portland, Oregon, and thereby engage in acting as an investment and/or financial advisor in the state of Oregon pursuant to §§ 225.25(b)(4) (iii), (iv) and (v) of the Board's Regulation Y; American Data Services, Inc., Portland, Oregon, and thereby engage in data processing and transmission services in the states of Oregon, Washington, Wyoming, Idaho, Montana and California, pursuant to § 225.25(b)(7) of the Board's Regulation Y; and Mortgage Creditcorp, Portland, Oregon, and thereby merge into Orbanco Real Estate Services Company some time after consummation.

Board of Governors of the Federal Reserve System, June 11, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13567 Filed 6-16-86; 8:45 am]

BILLING CODE 6210-01-M

Border Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be avialble 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 July 7, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Border Bancshares, Inc.*, Jackman, Maine; to become a bank holding company by acquiring 100 percent of the voting shares of Border Trust Company, Jackman, Maine.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York New York and Citicorp Holdings, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Great Western Bank and Trust, Phoenix, Arizona.

C. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Greenup Bankshares, Inc.*, Greenup, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Greenup County Bank, Greenup, Kentucky.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *American Banks of Florida, Inc.*, Jacksonville, Florida; to acquire 100 percent of the voting shares of American National Bank of Clay County, Orange Park, Florida, a *de novo* bank.

2. *First St. Charles Bancshares, Inc.*, Boutte, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of St. Charles Parish, Boutte, Louisiana.

3. *Gulf Harbor Banks, Inc.*, Dunedin, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Gulf Bank of Dunedin, Dunedin, Florida, a *de novo* bank.

E. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Continental Illinois Corporation*, Chicago, Illinois; to acquire 100 percent of the voting shares of South Suburban Bancorp, Inc., Olympia Fields, Illinois, and thereby indirectly acquire First Suburban Bank of Olympia Fields, Olympia Fields, Illinois.

2. *Lincoln Financial Corporation*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Farmers and Merchants Bank, Bluffton, Indiana.

F. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Holding Company of Cavalier, Inc.*, Cavalier, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank Cavalier, N.A., Cavalier, North Dakota.

Board of Governors of the Federal Reserve System, June 11, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13568 Filed 6-16-86; 8:45 am]

BILLING CODE 6210-01-M

Den Norske Creditbank et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 25.21(a)) to commence or to engage in *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that

outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Den Norske Credit Bank*, Oslo, Norway; to engage *de novo* through its subsidiary, Nordic West Leasing International, New York, New York, in leasing (on both a leveraged and non-leveraged basis) of capital equipment and other personal property and acting as agent, broker or adviser in connection with the leasing of such property, extending credit secured by capital equipment and other personal property and acting as agent, broker or adviser in connection with such extensions of such credit and servicing such lease transactions and extensions of credit entered into or made by the company and sold or brokered to others pursuant to sections 225.25(b)(5) and (1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *N.B.W.P. Inc.* and its affiliated Employee Stock Ownership Plan of N.B.W.P., Inc., both of Berlin, Pennsylvania; to engage, *de novo* through its subsidiary, N.B.W.P. Lease, Inc., Berlin, Pennsylvania, in leasing automobiles subject to the restrictions of § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in Somerset and Fayette Counties in Pennsylvania as well as other counties immediately contiguous thereto. Comments on this application must be received not later than July 7, 1986.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary FBS Mortgage Corporation, Minneapolis, Minnesota, in arranging commercial real estate equity financing through its wholly owned subsidiary pursuant to § 225.25(b)(14) of the Board's Regulation Y.

2. *Resource Companies, Inc.*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Resource Capital Advisers, Inc., Minneapolis, Minnesota, in providing continuous and individualized management of investment portfolios including equities, bonds and short-term investments pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 11, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13569 Filed 6-16-86; 8:45 am]

BILLING CODE 6210-01-M

Greater Milwaukee Financial Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) 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 acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 7, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Greater Milwaukee Financial Corp.*, Milwaukee, Wisconsin; to acquire Foremost Leasing Services, Inc., Wauwatosa, Wisconsin, and thereby engage in leasing personal or real property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First State Bancorp, Inc.*, Caruthersville, Missouri; to acquire Permiscot Insurance Agency, Inc., Hayti, Missouri, and thereby engage in the sale of general insurance in a town of less than 5,000 in population, pursuant to section 4(c)(8) of the Bank Holding Company Act. These activities will be conducted in Hayti, Missouri.

Board of Governors of the Federal Reserve System, June 11, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13570 Filed 6-16-86; 8:45 am]

BILLING CODE 6210-01-M

Winter Park Bankshares, Inc.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 86-12618, published at page 20550 of the issue for Thursday, June 5, 1986.

1. *Winter Park Bancshares, Inc.*, Park Falls, Wisconsin; to acquire 100 percent of the voting shares of Voyageur Development Corporation, Park Falls, Wisconsin, and thereby indirectly acquire Park Falls State Bank, Park Falls, Wisconsin.

Applicant has also applied to acquire Chippewa Valley Agency, Ltd. Winter, Wisconsin, and thereby indirectly acquire Chippewa Valley Bank, Winter, Wisconsin. Applicant has also applied to engage in general insurance agency activities in a town with a population of less than 5,000 pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in Sawyer County, Wisconsin.

Comments on this application must be received not later than June 27, 1986.

Board of Governors of the Federal Reserve System, June 11, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-13571 Filed 6-61-86; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules; Correction

AGENCY: Federal Trade Commission.

ACTION: Correction.

SUMMARY: This document corrects a Commission document previously published in the **Federal Register** on Thursday, June 5, 1986 (51 FR 20550, FR Doc. 86-12655). The "Waiting period terminated effective" date for entry number 1 (86-0832—The Prospect Group, Inc.'s proposed acquisition of assets of Illinois Central Gulf Railroad Company, (I C Industries, UPE)) was incorrect. The correct date should have been March 27, 1986.

DATE: The correction is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, FTC/H-301, Washington, DC 20580, (202) 523-3894.

Emily H. Rock,

Secretary.

[FR Doc. 86-13598 Filed 6-16-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cervical Cancer Prevention and Control Program Announcement and Notice of Availability of Funds for Fiscal Year 1986

The Center for Environmental Health (CEH), Centers for Disease Control (CDC), announces that competitive applications are being accepted to support Cervical Cancer Prevention and Control Demonstration Projects. The Catalog of Federal Domestic Assistance number is 13.283.

Authority

This program is authorized under Section 301 of the Public Health Service Act.

Availability of Funds

It is expected that approximately $275,000 will be available in Fiscal Year 1986 to fund one award. The award will be funded with a 12-month budget period and a 5-year project period. It is planned that $275,000 will be available each year. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives and availability of funds. The funding estimate outlined above may vary and is subject to change.

Eligible Applicants

The official health agencies of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Island, Guam, Trust Territories of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa are eligible to apply for a cooperative agreement.

Type of Assistance

The award resulting from this announcement will be a cooperative agreement.

Objectives and Collaborative Activities

A. Objectives

1. Develop the generic methodology for determining the factors which hinder detection, diagnosis, and treatment of cervical cancer.

2. Specify the measures needed to overcome obstacles to prevention of cervical cancer.

3. Implement and evaluate these measures to overcome obstacles to prevention.

B. Cooperative Activities

1. Recipient Activities

a. Design and develop a protocol to be made a part of this agreement, to conduct a population-based clinical/epidemiologic study of factors which may influence cervical cancer mortality among adult women. The protocol will cover all aspects of this study including the implementation schedule, the selection of study participants, the sampling process and the collection of baseline data, training of study staff, questionnaire development, verfication of data reported by study participants, and data entry and analyses.

b. Develop specific plans for: (1) Assessing the incidence of cervical dysplasia, carcinoma in situ (CIS), and invasive cervical cancer (ICC), (2) assessing the knowledge, attitudes, and practices of women and their physicians with regard to screening and cervical cancer, (3) assessing risk factors for cervical cancer including factors associated with diagnosis at a late stage (i.e., ICC), (4) assessing the quality of treatment for cervical cancer, (5) identifying cytology laboratories, pathologists, hospitals, etc., and assessing the quality of cervical cytologic services, (6) developing and implementing invervention strategies, and (7) evaluating the impact of interventions.

c. Establish a report procedure to advise participants and local citizens of study findings and their implications.

d. Conduct statistical and epidemiologic analyses of study data and publish study findings.

2. Centers for Disease Control (CDC)

a. Provide technical assistance in the development of all phases of the study protocol including Study design, designation/selection of study population, identification of risk factors, assessment of cervical cytologic services, design of instrument for data collection; evaluation of interventions; training of study staff; and data entry and analysis.

b. Provide epidemiologic and other technical assistance in both the planning and implementation of all phases of this study.

c. Provide technical assistance in the assessment of cervical cytologic services, and in monitoring the collection of data.

d. Collaborate in the statistical and epidemiologic analyses of study data and in the publication of study findings.

3. All Participating Parties

All statements concerning the conduct and the results of these projects, including press releases, statements to the public, and statements to governmental agencies or private organizations, will come from the recipients' designated spokesperson, after review and consultation among officials of CDC. Recipient will serve as the ultimate repository of all information originating from the project.

Reports

Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

Applications

A. Copies—Place of Submission

The original and two copies of the application should be submitted on Form PHS 5161-1 by July 21, 1986 to: Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Room 321, 255 East Paces Ferry Road, NE, Atlanta, Georgia 30305.

Application forms may be obtained from the above address.

B. Deadlines

The applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commerical carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications

Applications which do not meet the criteria in either paragraph 1 or 2 immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

D. Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Review Criteria

A. Initial Applications

Applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

1. Adequacy and completeness of the project paln and methodology, including a description of:

a. The requirements, problems, objectives, complexities, and interactions required of this cooperative agreement.

b. How closely objectives of the proposal fit the objectives for which applications were invited.

c. Project development and implementation including action steps and time frames.

d. How surveillance, planning, epidemiologic evaluation, and coordinating activities will be conducted.

e. How project baseline data will be collected.

f. How specific intervention strategies aimed at reducing morbidity and mortality in the targeted population will be formulated, implemented, and evaluated.

2. Qualifications and adequacy of time allocation of the applicant's existing staff and staff to be assigned to this project and the facilities, capabilities, office space, necessary equipment, and support staff resources available for the performance of this project.

3. Documentation that the area covered by the application encompasses a defined population and focuses on a population which meets the following:

a. Sample is drawn from a population of at least 1.5 million in an urban area with a wide range of socio-economic levels and diverse racial and ethnic groups.

b. Area chosen need not necessarily represent a complete jurisdiction (e.g., a State or city) but must be population-based (i.e., encompass a definable population).

c. Applicant resources must include available census and vital data and an ongoing cancer registry or the commitment and potential to establish this necessary registry.

4. The soundness of proposed methods to achieve objectives and of the evaluation plan to monitor effectiveness.

5. Explanation of budget request including justification for individual budget items.

B. Continuation Applications

1. A continuation application within the project period will be made on the basis of the following criteria:

a. The accomplishment of the current budget period should show that the applicant is meeting its objectives;

b. The objectives for the new budget period are realistic, specific, and measurable;

c. The methods described will clearly lead to the achievement of these objectives;

d. The evaluation plan will allow management to monitor whether the methods are effective in achieving objectives;

e. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of the cooperative agreement funds.

Content of Application

Applicants Are Required To Include a Narrative Which Must

A. Describe the applicant's understanding of the requirements, problems, objectives, complexities, and interactions required of this cooperative agreement.

B. Describe how the applicant will develop and implement this project including a time schedule.

C. Document the ability to provide the staff, knowledge, and resources to perform their part of this project, and describe the approach to be used in carrying out their responsibilities.

D. Identify and provide the qualifications and time allocations of the existing staff and staff to be assigned to this project, and the facilities/capabilities, office space, necessary equipment, and support staff resources available for the performance of this project.

E. Specify how the project will be administered, including the organizational structure.

F. Describe plans to publish results and designate responsibilities for scientific publications and authors, summary documents, news releases, etc.

Information

Information on application procedures, copies of application forms, and other material may be obtained from: Mr. Luther DeWeese, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, (404) 262–6575 or FTS 236–6575.

Technical assistance may be obtained from the Division of Chronic Disease Control:

Marion Nadel, Ph.D., Health Scientist, Cancer Branch, Division of Chronic Disease Control, Center for Environmental Health, Centers for Disease Control, Atlanta, Georgia 30333, (404) 452–4068 or FTS 236–4068.

Richard B. Rothenberg, M.D., Assistant Director for Science, Division of Chronic Disease Control, Center for Environmental Health, Centers for Disease Control, Atlanta, Georgia 30333, (404) 452–4251 or FTS 236–4251.

Dated: June 11, 1986.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86–13612 Filed 6–16–86; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 86N–0229]

Removal of Nomifensine Maleate From List of Approved Drug Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing both its determination that nomifensine maleate was withdrawn from sale by its manufacturer for reasons of safety, and the removal of nomifensine maleate from the publication "Approved Drug Products with Therapeutic Equivalence Evaluations" (the list). The list is a requirement under the Drug Price Competition and Patent Term

Restoration Act of 1984. Nomifensine maleate is an antidepressant drug that was marketed under the trade name Merital.

DATE: The drug nomifensine maleate was removed from the approved drug products list effective March 19, 1986.

FOR FURTHER INFORMATION CONTACT: Carol Kimbrough, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act (the 1984 amendments), which amends the Federal Food, Drug, and Cosmetic Act (the act) and requires, among other things, FDA to make publicly available a list, supplemented monthly, of drug products approved as safe and effective for marketing. One use of the list is as a source of information on drugs that are eligible for agency approval on the basis of abbreviated new drug applications (ANDA's). Section 505(j)(6)(C) of the act (21 U.S.C. 335(j)(6)(C)), added by the 1984 amendments, requires FDA to immediately remove from the list any drug that the agency determines was withdrawn from sale for safety or effectiveness reasons. Once removed from the list, the drug is no longer eligible for approval on the basis of ANDA's.

In implementing the 1984 amendments, the agency satisfied the requirement for a publicly available list of approved drugs by modifying and supplementing a regular agency publication, "Approved Drug Products with Therapeutic Equivalence Evaluations," popularly known as "the Orange Book." The current edition (1985, 6th edition) of that publication contains an entry on page 3-155 for nomifensine maleate, 25 milligram (mg) and 50 mg capsules, approved for marketing by Hoechst-Roussel Pharmaceuticals, Inc. (Hoechst-Roussel). No other nomifensine maleate products are approved for marketing.

On January 23, 1986, Hoechst-Roussel announced that it was immediately withdrawing nomifensine maleate (trade name, Merital) from sale in the United States and on a worldwide basis. The manufacturer stated that the voluntary withdrawal was being undertaken as a precautionary measure because of an increase in the number of reports of serious hypersensitivity reactions, notably hemolytic anemia, occuring in nomifensine-treated patients in the United Kingdom. (The hemolytic anemia side effect is included in the product's approved labeling.)

Communications between the FDA staff and Hoechst-Roussel confirmed that the manufacturer's decision to withdraw the product from sale was base on safety concerns. As a consequence, the Director of the Center for Drugs and Biologics determined that under section 505(j)(6)(C) of the act, nomifensine maleate should be removed from the list of approved drugs that the agency is required to maintain. (The 25 mg nomifensine maleate product on the list was never marketed in the United States. However, for purposes of implementation of section 505(j)(6)(C) of the act, the agency is deeming the circumstances of the withdrawal from marketing of the 50 mg product to include constructive withdrawal of the 25 mg product as well.) This change, effective on March 19, 1986, was indicated in the most recent Orange Book supplement, cumulative supplement 7, August 1985 to March 1986. As a consequece of the removal, ANDA's will not be accepted for the drug.

Dated: June 10, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-13573 Filed 6-16-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0206]

Travenol-Genentech Diagnostics; Premarket Approval of GammaDab ® [^{125}I] Alpha-Fetoprotein Radioimmunoassay Kit (for Use as an Aid in the Detection of Fetal Open Neural Tube Defects)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Travenol-Genentech Diagnostics, Cambridge, MA, for premarket approval, under the Medical Device Amendments of 1976, of the GammaDab® [^{125}I] Alpha-Fetoprotein Radioimmunoassay Kit (for use as an aid in the detection of fetal open neural tube defects). After reviewing the recommendation of the Immunology Devices Panel, DFA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by July 17, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305, Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: S.K. Vadlamudi, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: On December 26, 1979, Travenol-Genentech Diagnostics, Cambridge, MA 02139, submitted to CDRH an application for premarket approval of the GammaDab® [^{125}I] Alpha-Fetoprotein Radioimmunoassay Kit. The device is an alpha-fetoprotein (AFP) immunological test system indicated for use as an aid in the detection of fetal open neural tube defects. The device is an in vitro radioimmunoassay indicated for the quantitative measurement of alpha-fetoprotein (AFP) in maternal serum at 15 to 19 weeks gestation and in amniotic fluid at 15 to 20 weeks gestation. The device, when used in conjunction with ultrasonography or amniography, and amniotic fluid acetylcholinesterase testing, is safe and effective for use as an aid in the detection of fetal open neural tube defects. The application was reviewed on January 16, 1984, by the Immunology Devices Panel, an FDA advisory committee, which recommended approval of the application. On April 30, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact S.K. Vadlamudi, (HFZ-440), address above.

Opportunity for Administrative Review

Section 551(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory

committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 17, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 6, 1986.

John C. Villforth,

Director,

Center for Devices and Radiological Health.

[FR Doc. 86-13576 Filed 6-16-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86N-0256]

Searle, Division of G.D. Searle & Co. et al; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) withdraws approval of 58 new drug applications (NDAs) based on the written requests of the applicant.

EFFECTIVE DATE: July 17, 1986.

FOR FURTHER INFORMATION CONTACT: Ron Lyles, Center for Drugs and Biologics, Product Information Coordination Staff (HFN-46), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

SUPPLEMENTARY INFORMATION: The holders of the NDAs listed below have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the NDAs. The applicants have also, by request, waived their opportunity for hearing.

NDA	Drug name	Applicant's name and address
2-435	Metamucil-2	Searle, Division of G. D. Searle & Co., 4901 Searle Pkwy., Skokie, IL 60077.
2-976	Methoquin	Adria Laboratories, Inc., P.O. Box 16529, Columbus, OH 43216.
4-073	Diethylstilbestrol Perles	The Upjohn Co., Kalamazoo, MI 49001.
5-419	5% Protein Hydrolysate Injection.	Travenol Laboratories, Inc., Deerfield, IL 60015.
5-822	Lorophyn Suppositories	Norwich Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815.
6-141	Folbesyn Vitamins B with C.	Lederle Laboratories, Division of American Cyanamid Co., Pearl River, NY 10965.
6-286	Propylthiouracil Tablets	Parke-Davis, Division of Warner-Lambert, 201 Tabor Rd., Morris Plains, NJ 07950.
6-333	Synophylate Injection, Suppository, Syrup & Tablets.	Central Pharmaceuticals, Inc., 110-128 Third St., Seymour, IN 47274.
7-336	Verloid	Riker Laboratories, Inc., 270-3A 3M Center, St. Paul, NM 55144.
9-694	DEPO-ACTH Sterile Solution.	The Upjohn Co.
9-970	Diafen Tablets	Riker Laboratories, Inc.
10-868	Paracortol Tablets	Parke-Davis.
10-962	Paracort Tablets	Do.
11-103	PROTEF Rectal Ointment.	The Upjohn Co.
11-200	Tral Gradumet Tablets	Abbott Laboratories, North Chicago, IL 60064.
11-560	Candettes Cough Lozenges.	Pfizer Pharmaceuticals, Pfizer, Inc., 235 E. 42nd St., New York, NY 10017.
12-226	Dianabol	Ciba-Geigy, Summit, NJ 07901.
12-362	MEDROL MEDULES	The Upjohn Co.
12-394	Disophrol Tablets	Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07003.
13-054	Oracon	Mead-Johnson, Research Center, Evansville, IN 47721.
13-327	Improved Koromex Jelly	Holland-Rantos Co., Inc., Enterprise Ave., P.O. Box 5147, Trenton, NJ 08638.
13-508	Pitocin Buccal Tablet	Parke-Davis.
14-206	Ventussin Loz-Tablets	Adria Laboratories, Inc.
14-490	VESPRE Douche Powder.	Advanaced Care Products, Div. Ortho Pharmaceutical Corp., Raritan, NJ 08869.
16-039	Meprobamate	Vita-Fore Products Co., Inc., 95-07 98th St., Ozone Park, NY 11416.
16-064	Intersept Brand Antiseptic Foam	Johnson & Johnson Products, Inc., New Brunswick, NJ 08903.
16-112	Meprobamate Tablets 200 mg, 400 mg.	Purec Pharmaceutical, Co., Division of Kalipharma, Inc., 200 Elmora Ave., Elizabeth, NJ 07207.
16-361	NORQUEN Tablets	Syntex Laboratories, Inc., 3401 Hillview Ave., Palo Alto, CA 94304
16-593	Pentaerythritol Tetranitrate.	Smith, Kline and French Laboratories, 1500 Spring Garden St., P.O. Box 7929, Philadelphia, PA 19101.
16-642	Chlormerodrin Hg 197 Injection.	Malinckrodt, Inc., 675 McDonald Blvd., P.O. Box 5840, St. Louis, MI 63134.
16-747	Periactin Tablets and Syrup	Merck Sharp and Dohme, Division of Merck & Co., Inc., West Point, PA 19486.
16-853	Norlestrin 28/2.5 mg Tablets.	Parke-Davis.
16-894	Oracon-28	Mead-Johnson.
17-249	Technetium TC 99n Sterile Generator.	Boehringer Mannheim Corp., Pharmaceuticals Div., 1301 Piccard Dr., Rockville, MD 20850.
17-465	5% Dextrose-Injection in Plastic Container.	Travenol Laboratories, Inc.
17-477	0.9% Sodium Chloride Injection in Plastic Container.	Do.
17-504	10% Dextrose Injection in Plastic Container.	Do.
17-509	5% Dextrose and 0.45% Sodium Chloride Injection in Plastic Container.	Do.
17-523	Zorane 1/20 Tablets	Parke-Davis.
17-524	Zorane 1.5/30 Tablets	Do.
17-539	Zorane 1/50 Tablets	Do.
17-564	Selenomethionine SE-75.	Amershan Corp., 2636 South Clearbrook Dr., Arlington Heights, IL 60005.
17-587	5% Dextrose and 0.2% Sodium Chloride Injection in Plastic Container.	Travenol Laboratories, Inc.
17-590	Plasma-Lyte 56 in 5% Dextrose Injection in Plastic Container.	Do.
17-591	5% Dextrose and 0.33% Sodium Chloride Injection in Plastic Container.	Do.
17-593	5% Dextrose in Lactated Ringer's Injection in Plastic Container.	Do.
17-595	Lactated Ringer's Injection in Plastic Container.	Do.
17-597	10% Dextrose and 0.9% Sodium Chloride Injection in Plastic Container.	Do.
17-616	5% Dextrose and 0.9% Sodium Chloride Injection in Plastic Container.	Do.
17-620	5% Dextrose with Electrolyte No. 48 in Plastic Container.	Do.
17-621	0.45% Sodium Chloride in Water in Polyolefin Container.	Do.
17-626	Kidney/Brain Scanning Kit.	Boehringer Mannheim Corp.
18-566	5% Dextrose, 0.45% Sodium Chloride and Potassium Chloride Injection in Plastic Container.	Travenol Laboratories, Inc.
18-567	5% Dextrose, 0.2% Sodium Chloride and Potassium Chloride Injection in Plastic Container.	Do.
18-595	Water for Injection, USP in Plastic Container.	Do.

NDA	Drug name	Applicant's name and address
18-630	0.9% Sodium Chloride and Potassium Chloride Injection in Plastic Container.	Do.
18-635	5% Dextrose in Ringer's Injection in Plastic Container.	Do.
18-648	Ringer's Injection in Plastic Container.	Do.

The agency has determined that, in accordance with 21 CFR 25.24(c)(3) (published in the **Federal Register** of April 26, 1985 (50 FR 16636)), this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (section 505(e), 76 Stat. 782 as amended (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.82), approval of the new drug applications listed above, and supplements thereto, is hereby withdrawn.

This order becomes effective on July 17, 1986.

Dated: June 9, 1986.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 86-13577 Filed 6-16-86; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration Advisory Committee Establishment

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix II), the Health Resources and Services Administration announces the establishment by the Secretary, HHS, of the Council on Graduate Medical Education on June 6, 1986, pursuant to 42 U.S.C. 295i, Section 799 Public Health Service Act.

Designation: Council on Graduate Medical Education.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with resepct to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), (C) above; and (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Authority for this Council will expire on September 30, 1996.

Dated: June 11, 1986.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 86-13578 Filed 6-16-86; 8:45 am]

BILLING CODE 4160-16-M

Public Health Service

Intermittent Positive Pressure Breathing Therapy; Notice of Assessment

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, and use (indications) of Intermittent Positive Pressure Breathing (IPPB) therapy.

IPPB therapy consists of the use of a pressure-limited respirator to deliver a gas with or without humidity and/or an aerosol solution at various intervals to assist a patient in breathing. Information is sought as to the current uses, advantages, and disadvantages of IPPB in the treatment of acute bronchospasm and chronic obstructive pulmonary disease. Also, we would like information regarding other IPPB uses including any as a therapeutic modality as well as a preventive measure against pulmonary complications occurring after abdominal surgery.

Specifically, we wish to determine if this treatment method offers any advantages over using a compression nebulizer or a metered-dose inhaler with or without B-agonists. We also seek information about IPPB clinical results as compared to deep breathing exercises or incentive spirometry as well as a comparison of complications with the use of a hand-held nebulizer. Finally, are there conditions or circumstances under which IPPB is not only a reasonable and necessary therapy but is the preferred therapy?

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector and from PHS and other agencies in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit from it, as well as on the clinical acceptability and the effectivenss of this technology and the extent of use is also being sought. Proprietary information is not being sought. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than September 11, 1986.

Written material should be submitted to: John R. Farrell, M.D., Office of Health Technology Assessment, NCHSR & HCTA, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4990.

Dated: June 9, 1986.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services, Research and Health Care Technology Assessment.

[FR Doc. 86-13669 Filed 6-16-86; 8:45 am]

BILLING CODE 4160-17-M

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, 09-30-0048, "Intramural Research Program Records of In- and Out-Patients With Various Types of Alcohol Abuse and Dependence, Relatives of Patients With Alcoholism, and Healthy Volunteers, HHS/ADAMHA/NIAAA." We are also proposing routine uses for this new system.

DATES: PHS invites interested parties to submit comments on the proposed routine uses on or before July 17, 1986. PHS has sent a Report of a New System to the Congress and to the Office of Management and Budget (OMB) on June 6, 1986. The routine uses will be effective 30 days after the date of publication unless PHS receives

comments which would result in a contrary determination.

ADDRESS: Please submit comments to: Privacy Act Officer, Alcohol, Drug Abuse, and Mental Health Administration, Room 6–102, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4543.

Comments received will be available for inspection at this same address from 8:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Clinical Director, Laboratory of Clinical Studies, Division of Intramural Clinical and Biological Research, National Institute on Alcohol Abuse and Alcoholism, Building 10, Room 3B–19, 9000 Rockville Pike, Bethesda, Maryland 20892, (301) 496–5353.

SUPPLEMENTARY INFORMATION: The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) proposes to establish a new system of records: 09–30–0048, "Intramural Research Program Records of In- and Out-Patients With Various Types of Alcohol Abuse and Dependence, Relatives of Patients With Alcoholism, and Healthy Volunteers, HHS/ADAMHA/NIAAA." This proposed umbrella system of records will comprise records generated in research projects conducted by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) in fulfilling its congressionally mandated responsibility for biomedical, behavioral, epidemiological, and social reseach. This research will be performed by intramural program staff of NIAAA.

Records collected under this system will be organized and maintained according to the particular study which they support. Records will not be entered into a general or comprehensive data base, nor will there be any general index identifying all persons who are subjects of records in the separate studies covered by this system. However, NIAAA will be treating the separate sets of records as a single system under the Privacy Act (1) because all of the sets of records serve the same research purposes and contain similar types of data, (2) in order to apply consistent policies and practices in the maintenance of such records, and (3) to make it easier for subject individuals to obtain notification of, or access to, their records.

The system will contain Social Security numbers for purposes of medical record identification. Individuals will be advised that disclosure of their social security number is voluntary and that no right, benefit, or privilege provided by law will be denied in the event the individual decides not to disclose the social security number.

The records in this system will be maintained in a secure manner compatible with their content and use. Access will be given only to authorized medical and research staff whose official duties require access for research purposes or to alert the subjects to any findings in the study that might affect their health. Individually identifiable records will be kept in a locked, limited access area. Computerized records will be accessible only through a series of account numbers and passwords, which are changed frequently.

These records are covered by Section 527 of the Public Health Service Act (42 U.S.C. 290ee–3) and 42 CFR, Chapter I, Subchapter A, Part 2, on confidentiality of alcohol and drug abuse patient records; therefore, information from the records will be disclosed only at the request of the individual, for research purposes, or to medical personnel to the extent necessary to meet a bona fide emergency.

The first routine use proposed for this system is compatible with the stated purposes of the system in planning for, conducting, managing, and evaluating biomedical, behavioral, epidemiological, and social research. The second routine use, permitting disclosure to a congressional office, is proposed to allow subject individuals to obtain assistance from their representatives in Congress, should they so desire. Such disclosure would be made only pursuant to a request of the individual. The third routine use is proposed to allow disclosure to defend the Federal Government, the Department, or employees of the Department in the event of litigation.

This system notice is written in the present, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after it becomes effective.

Dated: June 6, 1986.

John Elsbree,

Acting Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09–30–0048

System Name: Intramural Research Program Records of In- and Out-Patients With Various Types of Alcohol Abuse and Dependence, Relatives of Patients With Alcoholism, and Healthy Volunteers, HHS/ADAMHA/NIAAA.

Security Classification: None.

System Location: National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. A list of specific project sites is available from the System Manager.

Categories of Individuals Covered by the System: In- and out-patients with alcohol abuse and dependence, alcohol-induced organic brain syndromes; their relatives; and healthy volunteers.

Categories of Records in the System: Research data of wide variety including biochemical measures, psychophysiological and psychological tests, questionnaires, clinical and behavioral observations and interviews, physical examinations, and correspondence.

Authority for Maintenance of the System: Public Health Service Act, as amended, Section 301 (42 U.S.C. 241) and 510 (42 U.S.C. 290bb). These sections authorize the conduct of general health research and research into alcoholism and alcohol abuse.

Purpose(s): These records are used for diagnosis and treatment of patients with alcohol abuse and dependence and related conditions; behavioral research relating to the causes, diagnoses, and treatment of addictions; and basic research on behavioral and biological processes.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Use

Records in this system are covered by Section 527 of the Public Health Service Act (42 U.S.C. 290ee–3) and 42 CFR, Chapter I, Subchapter A, Part 2, on confidentiality of alcohol and drug abuse patients records. In accordance with these regulations, the records are confidential and may only be disclosed wth the written consent of the patient with specific restrictions, and without the patient's consent in the following instances: (1) To medical personnel to the extent necessary to meet a bona fide emergency; (2) to qualified personnel for the purpose of conducting scientific research; or (3) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore, after certain considerations, and with appropriate safeguards. Routine uses of information in this system are limited to the following:

1. A record may be disclosed for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the

risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the Congressional office at the written request of that individual, in accordance with 42 CFR, Chapter 1, Subchapter A, Part 2.

3. The Department may disclose information from this system of records to the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a defendant in litigation and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective defense, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System

Storage: Records may be stored in file holders, on index cards, computer tapes and disks, microfiche, microfilm and audio and video tapes. Normally the factual data, with study code numbers, are stored on computer tape or disk, while the key to personal indentifiers is stored separately, without factual data, in paper files.

Retrievability: During data collection stages and followup, retrieval by personal identifier (e.g., name or medical record number) is necessary. During the data analysis stage, data are normally retrieved by variables of interest, e.g., age, diagnosis, etc.

Safeguards: Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained in each project. Depending on the sensitivity of the project, additional safeguards may be added.

1. Authorized Users: Only NIAAA medical and research staff have access to these records, as authorized by the system manager.

2. Physical Safeguards: Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities. Personal identifiers and link codes are separated as much as possible and stored in locked files.

3. Procedural Safeguards: Collection and maintenance of data are consistent with legislation and regulations for the protection of human subjects, informed consent, confidentially, and confidentially specific to drug and alcohol patients. Computer data access is limited through the use of key words, a series of account numbers, and passwords which are changed frequently and known only to authorized personnel.

4. Implementation Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administrative Manual, and Part 6, "ADP System Security" in the HHS Information Resources Management Manual.

Retention and Disposal: Records are held for 5 years after completion of the project, retired to a Federal Records Center, and subsequently disposed of after 10 years.

System Manager(s) and Address: Clinical Director, Laboratory of Clinical Studies, Division of Intramural Clinical and Biological Research, National Institute on Alcohol Abuse and Alcoholism, Building 10, Room 3B–19, 9000 Rockville Pike, Bethesda, Maryland 20892.

Notification Procedures: To determine if a record exists, write to the System Manager at the address above. Provide notarized signature as proof of identity. The request should include as much of the following information as possible: (a) Full name; (b) nature of illness (if any); (c) title of study; (d) name of researcher conducting study. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of child's/incompetent person's record shall at the time the request is made designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The designee will receive the record in all cases and upon review will determine whether the record should be made available to the parent or guardian.

Record Access Procedures: Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

Contesting Record Procedures: Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

Record Source Categories: Information gathered from individuals under study, either patient or normal subject, contract surveys, hospital records, medical and nursing staff notes, and from Privacy Act system of records 90–25–0099, "Clinical Research: Patient Medical Records HHS/NIH/CC."

Systems Exempted From Certain Provisions of the Act: None.

[Doc. 86–13579 Filed 6–16–86; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A 20346-C]

Realty Action; Partial Termination of Segregative Effect, Arizona

By Federal Register publication of April 4, 1985 the following described public land was segregated from appropriation under the public land laws, including the mining laws.

Gila and Salt River Meridian, Arizona

T. 19 N., R. 16 E.,
Sec. 20, E½NE¼.
Containing 80 acres.

This land is hereby open to application under the Recreation and Public Purposes Act. The land remains closed to location under the mining laws but not to the mineral leasing laws or Geothermal Steam Act.

Dated: June 4, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86-13621 Filed 6-16-86; 8:45 am]

BILLING CODE 4310-32-M

Craig District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of advisory council meeting.

SUMMARY: This notice sets forth the schedule and agenda for public involvement for the forthcoming meeting of the Craig District Advisory Council meeting.

Date and time of meeting: Wednesday, July 16, 1986, 9:30 a.m.

Address of meeting: Pumphouse Recreation Site, 14 miles southwest of Kremmling, Colorado.

FOR FURTHER INFORMATION CONTACT: Mary Pressley, Public Affairs, Bureau of Land Management, (303) 824-8261.

In accordance with Pub. L. 94-579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on July 16, 1986.

Advisory Council members and BLM staff will float the Colorado River to see and discuss trespass problems, alternative scouting sites for rapids, and Colorado Division of Wildlife exchange parcels.

The trip will begin at 9:30 a.m. at the Pumphouse, located approximately 14 miles southwest of Kremmling, Colorado. Directions to the Pumphouse are available from the Kremmling Resource Area Office at 303-724-3437.

The meeting will be open to the public; however, anyone interested in attending must provide his own transportation both on and off the river. Anyone wishing to attend or make a statement, should notify the District Manager, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625, by July 11, 1986.

Summary minutes of the Council Meeting will be maintained in the Craig District Office and will be available for public inspection and reproduction during regular business hours.

Dated: June 10, 1986.

Larry P. Bauer,

Acting District Manager.

[FR Doc. 86-13619 Filed 6-16-86; 8:45 am]

BILLING CODE 4310-JB-M

[F-14838-A]

Alaska Native Claims Selection; Bethel Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Bethel Native Corporation, notice of which was published in the **Federal Register**, 51 FR 18846, on May 22, 1986, is modified to correct an error in the land description.

A notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in *The Tundra Drums.* Copies of the modified DIC may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until July 17, 1986 to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given May 22, 1986, is final.

Ann Adams,

Section Chief, Branch, of ANCSA Adjudication.

[FR Doc. 13586 Filed 6-16-86; 8:45 am]

BILLING CODE 4310-TA-M

[N-390040]

Realty Action; Exchange of Public and Private Lands in Humboldt County, NV

The Notice of Realty Action Published October 16, 1985 (50 FR 41960) is hereby corrected to delete paragraph three of the reservations to the United States.

The effect of this correction is to remove the reservation of the mineral estate to the United States and correct the Notice to read, "The mineral estate will not be reserved to the United States."

Dated: June 6, 1986.

Frank C. Shields,

District Manager.

[FR Doc. 86-13587 Filed 6-16-86; 8:45 am]

BILLING CODE 4310-HC-M

[A 20346-N]

Realty Action; Exchange of Public Land, Pima County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

Realty Action: Exchange of public lands, Pima County, Arizona.

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 13 S., R. 12 E.,
Sec. 33, NE¼SE¼.
T. 12 S., R. 11 E.,
Sec. 25, E½, E½W½, SW¼NW¼, W½SW¼;
Sec. 28, NE¼NE¼.
T. 13 S., R. 11 E.,
Sec. 29, NE¼.
T. 14 S., R. 11 E.,
Sec. 4, SE¼SE¼.
T. 10 S., R. 7 E.,
Sec. 12, Lots 15, 16, 17.
Containing 1000 acres.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the

segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoneix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: June 6, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86-13623 Filed 6-16-86; 8:45 am]

BILLING CODE 4310-32-M

National Park Services

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 7, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 2, 1986.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

El Paso County

Colorado Springs, *Colorado Springs Fine Arts Center*, 30 W Dale St.

FLORIDA

Citrus County

Crystal River vicinity, *Mullet Key*, 4.5 km S of Crystal River mouth

Nassau County

Fernandina Beach, *Palmer, John Denham House*, 1305 Atlantic Ave.

Pinellas County

St. Petersburg, *Boone House*, 601 Fifth Ave. N

Sarasota County

Miakka vicinity, *Miakka School House*, Miakka and Wilson Rds.

LOUISIANA

Rapids Parish

Alexandria, *Veterans Administration Medical Center*, US 165 and 71

MAINE

Somerset County

Hinckley, *Hinckley Good Will Home Historic District*, US 201

MASSACHUSETTS

Essex County

Beverly, *Hose House #2*, 30 Rantoul St.

Hampshire County

Amherst, *East Village Historic District*, Main, N East, and S East Sts.

Middlesex County

Cambridge, *Craigie Arms (Cambridge MRA)*, 2—6 University Rd., 122 Mt. Auburn St., and 6 Bennett St.

Lowell, *Brown—Maynard House*, 84 Tenth St.

MINNESOTA

Douglas County

Osakis, *Osakis Milling Company*, Lake St. and Central Ave.

Steele County

Medford vicinity, *Clinton Falls Mill and Dam*, Off Cty. Hwy. 9

Owatonna, *Adair, Dr. John H., House*, 322 E. Vine St.

Owatonna, *Kaplan Apartments*, 5 W Rose St.

PENNSYLVANIA

Philadelphia County

Philadelphia, *Equitable Trust Building* 1405 Locust St.

[FR Doc. 86-13658 Filed 6-16-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30832]

The Atchison, Topeka and Santa Fe Railroad Co.; Trackage Rights; Oklahoma, Kansas and Texas Railroad Co.; Exemption

The Atchison, Topeka and Santa Fe Railroad Company (Santa Fe) has agreed to grant overhead trackage rights to the Oklahoma, Kansas and Texas Railroad Company (OK&T) between Abilene (Santa Fe Milepost 58+3177) and Lost Springs (Santa Fe Milepost 25.5), KS.

OK&T has agreed to grant overhead trackage rights to Santa Fe between Lost Springs (OK&T Milepost 178.5) and Wichita (OK&T Milepost 243.7), KS.

The trackage rights agreement will be effective on June 9, 1986. The trackage rights themselves will be effected upon construction of a connection between OK&T and Santa Fe at Lost Springs following approval or exemption by the Commission.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: June 6, 1986

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86-13597 Filed 6-16-86; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-16372]

Burlington Northern, Inc.; Control Exemption; Monkem Co., Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), the Commission exempted from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the acquisition of control by Burlington Northern, Inc., and Burlington Northern Motor Carriers, Inc., of Monken Company, Inc., by a decision served February 13, 1986. Inadvertently, notice of that action was not published in the Federal Register concurrently with service of the decision in accordance with adopted procedure. Proper notice is now being given.

DATE: Petitions for reconsideration and revocation may be filed, by July 7, 1986, by persons who have not previously filed such petitions.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr. (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to: T.S. InfoSystems, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Decided: May 27, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons and Commissioner Lamboley concurred in part and dissented in part with separate expressions.

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86-13595 Filed 6-16-86; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-16452]

Burlington Northern, Inc.; Control Exemption; Monroe Trucking, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), the Commission exempted from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the acquisition of control by Burlington Northern, Inc., and Burlington Northern Motor Carriers, Inc., of Monroe Trucking, Inc., by a decision served February 13, 1986. Inadvertently, notice of that action was not published in the **Federal Register** concurrently with service of the decision in accordance with adopted procedure. Proper notice is now being given.

DATE: Petitions for reconsideration and revocation may be filed, by July 7, 1986, by persons who have not previously filed such petitions.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to: T.S. InfoSystems, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Decided: May 27, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons and Commissioner Lamboley concurred in part and dissented in part with separate expressions.

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86-13596 Filed 6-16-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application of First State Chemical Co., Inc.,

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 30, 1986, McNeilab Inc., DBA First State Chemical Co., Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydrocodeine (9120)	II
Hydrocodone (9193)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than July 17, 1986.

Dated: June 6, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-13654 Filed 6-16-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: July 8, 1986, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, DC, this 12th day of June.

Christopher G. Hankin,

Associate Deputy Under Secretary for Trade, Bureau of International Affairs.

[FR Doc. 86-13677 Filed 6-16-86; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

Axem Resources, Inc., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than (June 27, 1986.).

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 27, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 9th day of June 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers of former workers of:)	Location	Date received	Date of petition	Petition No.	Articles produced
Axem Resources, Inc. (workers)	Denver, Co	5/30/86	5/28/86	TA-W-17,502	Drills and sell crude oil.
Danskin, Bldg No. 1, No. 2, No. 3, No. 4 (wkrs)	York, PA	5/27/86	5/19/86	TA-W-17,503	Active bodywear, leotards, tights, coverups.
GS Electric Motors Inc (workers)	Racine, WI	5/29/86	5/20/86	TA-W-17,504	Fractional horse power electric motors.
General Foods Mfg Corp., Atlantic Gelatin Div. (Co.)	Hollywood, CA	5/30/86	5/27/86	TA-W-17,505	Citrus pectin.
Hecla Mining Co., Lucky Friday Mine, Con Sil Unit & Hecla Shop (USWA).	Wallace, ID	5/22/86	5/19/86	TA-W-17,506	Silver, lead, zinc.
Manhattan-Miami Corp. (ACTWU)	Hialeah, FL	5/27/86	5/20/86	TA-W-17,507	Hats.
Noble Drilling Corp., Rocky Mountain Div. (workers)	Tulsa, OK	5/14/86	5/5/86	TA-W-17,508	Oil drilling.
Royal China Co. (GPPAW)	Sebring, OH	5/27/86	5/20/86	TA-W-17,509	Dinnerware and other tableware items.
Strippit/Di Acro Houdaille, Inc. (workers)	Akron, NY	5/30/86	5/22/86	TA-W-17,510	Computerized numerical controls and punch presses.
Totco (workers)	Mills, WY	5/13/86	5/5/86	TA-W-17,511	Pressure gauges, weight indicator, mud monitoring equipment.
Totco (workers)	Williston ND	5/14/86	5/7/86	TA-W-17,512	Pressure gauges, weight indicator, mud monitoring equipment.
Wyo-Ben, Inc. (company)	Greybull, WY	5/29/86	5/19/86	TA-W-17,513	Mining and milling bentonite for oil drilling.
Champion International Corp. (Co.)	Creedmoor, NC	5/27/86	5/21/86	TA-W-17,514	Dimension lumber.
Dowell Schlumberger (workers)	Williston, ND	5/27/86	5/13/86	TA-W-17,515	Supplied materials and services to oil wells.
Gearhart Industries Inc. Field Operation (workers)	Gillette, WY	5/27/86	5/29/86	TA-W-17,516	Logging service to oil well drilling.
Gearhart Industries (workers)	W. Williston, ND	5/28/86	5/19/86	TA-W-17,517	Wire-line oil well services.
General Motors (UAW)	Linden, NJ	5/28/86	5/23/86	TA-W-17,518	Oldsmobiles/Cadillacs.
Great Northern Paper Co. (Plumbing & Pipe Fitting Ind.)	Millinocket, ME	5/20/86	5/15/86	TA-W-17,519	Directory paper.
Jumping Jack Shoes Factory No. 1 (wkrs)	Monett, MO	5/27/86	5/22/86	TA-W-17,520	Childrens shoes.
Spartan Drilling & Workover (wkrs)	Sidney, MT	5/28/86	5/16/86	TA-W-17,521	Drilling oil and gas.
Sunshine Mining Co. (UAW)	Kellogg, ID	5/27/86	5/20/86	TA-W-17,522	Silver mine.
United Metal Fabricators, Inc. (Independent sheet Metal Works).	Johnstown, PA	5/27/86	5/19/86	TA-W-17,523	Hospital equipment and supplies.
Viking Mud Co., Inc. (workers)	Littleton, Co	5/27/86	5/10/86	TA-W-17,524	Starch, bentonite barite, salt etc for oil drilling.
Williston Tank Rental Inc. (workers)	Williston, ND	5/28/86	5/20/86	TA-W-17,525	Servicing of oil rigs.
AP Parts Co., Toledo Mfg Div. (UAW)	Toledo, OH	5/30/86	5/28/86	TA-W-17,526	Original equipment—exhaust systems for GM, Ford, AMC, etc.
Abelo Sportswear (workers)	Tamaqua PA	5/8/86	5/5/86	TA-W-17,527	Ladies sportswear.
Capitol Steel Corp. (Iron wkrs)	Oklahoma City, OK	5/27/86	5/21/86	TA-W-17,528	Fabricating iron steel.
Dual Drilling Co. Odessa Div. office (workers)	Odessa, TX	5/5/86	5/30/86	TA-W-17,529	Gas, oil well drilling and exploration.
Kaychester, Inc. (ILGWU)	Port Chester, NY	5/30/86	5/28/86	TA-W-17,530	Ladies dresses.
Newton Garment Co. (ILGWU)	Newton, NJ	5/30/86	5/27/86	TA-W-17,531	Cotton polyester blouses, slacks and skirts.
Rob Roy, Inc. (workers)	York, AL	5/16/86	5/8/86	TA-W-17,532	Children's wear.
Ronco Mfg Co., Inc. (ILGWU)	Ronco, PA	5/14/86	5/7/86	TA-W-17,533	Ladies clothing.
Sioux Tools, Inc. (IAMAW)	Sioux City, IA	5/30/86	5/27/86	TA-W-17,534	Air power and electric tools.
Westburne Drilling Inc. Rig No. 63 (wkrs)	Denver, CO	5/28/86	5/20/86	TA-W-17,535	Drilling oil and gas.
Sandy Lee Mfg (ACTWU)	Menominie, WI	5/5/86	5/1/86	TA-W-17,536	Mens outerwear.

[FR Doc. 86-13678 Filed 6-16-86;8:45 am]
BILLING CODE 4510-30-M

[TA-W-13, 616,13,676 and 13,698]

Duval Corp.; Mineral Park Property, Kingman, AZ; Sierrita Property, Sauharita, AZ; Esperanza Property, Tucson, AZ; a Further Determination on Remand

Pursuant to the U.S. Court of International Trade remand, dated March 12, 1986, *in United Steelworkers of America and Its Locals 68,196 and 7508* v. *Secretary of Labor*, (USCIT No. 83-7-00944) concerning the denial of certification for workers at the instant Arizona properties of Duval Corporation, the Department makes the following further determination on remand.

The Court held that the record did not support the Department's consideration of third quarter 1982 import statistics in light of the fact that the affected workers had been separated prior to that time and the Department's analysis of the "increases of imports" issue was unduly restrictive since the statute contemplates that imports of copper at earlier stages of production can also be directly competitive with refined copper and thus must also be evaluated to determine whether increased imports contributed importantly to the workers' separation.

Pursuant to the court's instructions, the Department has reexamined all issues related to the subject workers' eligibility for assistance and has reached the following determinations relevant to these petitions.

Duval is an integrated producer of refined copper and as such the product of Duval is refined copper.

The Department use of 1981 as the comparison year and 1980 as the base year is appropriate given the massive 1981 layoffs at Duval. Employment at Duval actually increased through the first three quarters of 1982 over the employment level at the end of 1981. The Department's use of import statistics for the first three quarters of 1982 is also appropriate and follows from the analysis of Duval's employment figures for 1982. The Department's practice is to use the most recent data available.

There occurred neither an absolute nor a relative increase in imports of refined copper in the relevant time period. The "increases of imports" requirement of the statute, therefore, could not be satisfied unless copper at earlier stages of production can be considered to be products "directly competitive with" refined copper and that such imports at earlier stages of production increased.

However, imports of copper ore and concentrate and blister copper decreased both absolutely and relative to domestic production in 1981 compared to 1980. Although imports of copper ore and concentrate and blister copper increased during the first three quarters of 1982 compared to the same period in 1981, the contributed importantly test was not met. Copper at earlier stages of production is consumed in the production of refined copper. The economic impact of increased imports of such products on refined copper production is a function of the extent to which such imports are converted to refined copper for sale. But in the first three quarters of 1982 compared to the same period in 1981, refined copper production and consumption declined notwithstanding increased imports of copper concentrate and blister copper. Further, Duval did not substitute copper concentrate imports for their own production. Lastly, the consumer survey results which represented a significant sample of Duval's customers show that there were no important shifts to imports of refined copper.

Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers at Duval Corporation, Mineral Park Property, Kingman, Arizona, Sierrita Property, Sahuarita, Arizona and Esperanza Property, Tucson, Arizona.

Signed at Washington, DC, this 9th day of June 1986.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Service, UIS.

[FR Doc. 86-13679 Filed 6-16-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17, 265]

U.S. Steel Mining Company, Inc. Somerset Mine, Paonia, CO; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 17, 1986 in response to a worker petition which was filed by the United Mine Workers of America on behalf of workers producing metallurgical coal at the Somerset Mine of U.S. Steel Mining Company, Incorporated, Paonia, Colorado.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-17, 179). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 6th day of June 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-13681 Filed 6-16-86; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period June 2, 1986—June 6, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-16,688; Honeywell, Inc., Ft Washington, PA

TA-W-16,420; K.P. Industries, Innneaspolis, MN

TA-W-17,079; Red Ash Sales Co. Inc., Iaeger, WV

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-17,091; United Steelworkers of America, Local No. 1397, Homestead, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,062; Mobil Oil Corp., Crown Point, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-16,770; Ambassador Laces Embroidery, Fairview, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-16,771; Ambassador Laces Embroidery Co., Inc., Union City, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-16,782; Artiste Laces, Guttenberg, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-16,799; Celway Corp., Union City NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-16,808; D.F.S. Embroadery Corp., Guttenberg, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-16,815; Dom's Embroidery, Fairview, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-16,854; Huber Embroidery Works, Fairview, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-16,878; K.R. Embroidery, West New York, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-16,936; Stucki Embroidery Corp., West New York, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-16,947; Union City Embroidery Co., Inc., North Bergen, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-16,708; Zenith Electronics, Inc., Springfield, MO

A certification was issued covering all workers of the firm separated on or after October 1, 1985.

TA-W-17,070; ExCell-O Mfg System Co., Rockford, IL

A certification was issued covering all workers of the firm separated on or after December 19, 1985.

TA-W-17,096; Goodyear Tire & Rubber Co., Chemical Dept #245, Akron, OH

A certification was issued covering all workers of the firm separated on or after

November 1, 1985 and before March 3, 1986.

TA–W–17,065; Abex Corp., AMSCO Div., New Castle, DE

A certification was issued covering all workers of the firm separated on or after July 1, 1985.

I hereby certify that the aforementioned determinations were issued during the period June 2, 1986–June 6, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213, during normal business hours or will be mailed to persons who write to the above address.

Dated: June 10, 1986.

[FR Doc. 86–13680 Filed 6–16–86; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–86–70–C

Old Ben Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Old Ben Coal Company, P.O. Box 500, 455 Race Track Road, Meadow Lands, Pennsylvania 15347 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables, and transformers) to its No. 26 Mine (I.D. No. 11–00590) located in Franklin County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables, and transformers not be located in by the last open crosscut and be kept at least 150 feet from pillar workings.

2. Petitioner is planning to install a longwall mining unit in the No. 26 Mine and in order to safely and efficiently mine the longwall panels, which have up to 1000 feet of face, the electrical and mechanical equipment needed must have adequate horsepower.

3. As an alternate method, petitioner proposes to use 2400 A.C. high voltage cables to supply power to longwall mining equipment in by the last open crosscut and within 150 feet of gob areas.

4. In support of this request, petitioner states that:

(a) The cable used will be shielded and each power conductor will be surrounded by a grounded metal shield with a cover that is protected by a ground fault monitoring system;

(b) The cables will enter the permissible equipment through approved stuffing box lead entrances or approved couplers and will be designed and constructed to withstand conditions found in underground mining; and

(c) A methane monitoring system will be built into the system which will cause all cable to be de-energized when methane is found in excess of 2% at the longwall face.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 17, 1986. Copies of the petition are available for inspection at that address.

Dated: June 4, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86–13682 Filed 6–16–86; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–86–72–C]

Rock Bull Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Rock Bull Mining, Inc., Route 2 Box 87X, Albright, West Virginia 26519 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 1 Mine (I.D. No. 46–05964) located in Preston 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 receptables 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 lossening and will be attached to prevent accidential loss. In addition, the fabricated metal brackets will be securely attached to the battery receptables to prevent accidential 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, Virgina 22203. All comments must be postmarked or received in that office on or before July 17, 1986. Copies of the petition are available for inspection at that address.

Dated June 4, 1986.

Patricia W. Silvey,

Director, Regulations and Variances.

[FR Doc. 86–13683 Filed 6–16–86; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–86–74–C]

U.S. Steel Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

U.S. Steel Mining Co., Inc., 600 Grant Street, Pittsburgh, Pennsylvania 15230 has filed a petition to modify the application of 30 CFR 75.506 (electric face equipment; requirements for permissibility) to its Cumberland Mine (I.D. No. 36–05018) located in Greene County, Pennsylvania. 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 receptacles on permissible, battery-powered machines.

2. As an alternate method, petitioner proposes to use a metal retainer device in lieu of padlocks. The device will be secured by a hand-operated, spring-loaded pin which will be attached to the

retainer device. This will also eliminate the possibility of keys being lost.

3. 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 July 17, 1986. Copies of the petition are available for inspection at that address.

Dated: June 4, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-13684 Filed 6-16-86; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506:

1. DATE: July 2-3, 1986
   TIME: 9:00 a.m. to 5:00 p.m.
   ROOM: 430
   PROGRAM: This meeting will review Challenge Grants applications from four-year Colleges, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1986.
2. DATE: July 14, 1986
   TIME: 8:00 a.m. to 5:00 p.m.
   ROOM: 415
   PROGRAM: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations program, submitted to the Division of General Programs, for projects beginning after January 1, 1987.
3. DATE: July 17-18, 1986
   TIME: 8:00 a.m. to 5:00 p.m.
   ROOM: 415
   PROGRAM: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations program, submitted to the Division of General Programs, for projects beginning after January 1, 1987.
4. DATE: July 10-11, 1986
   TIME: 9:00 a.m. to 5:00 p.m.
   ROOM: 430
   PROGRAM: This meeting will review Challenge Grants applications from Medium Sized Museums, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1986.
5. DATE: July 17-18, 1986
   TIME: 8:30 a.m. to 5:00 p.m.
   ROOM: M-14
   PROGRAM: This meeting will review applications submitted for the "Humanities Instruction in Elementary and Secondary Schools" programs, submitted to the Division of Education, for projects beginning after November 1, 1986.
6. DATE: July 21-22, 1986
   TIME: 9:00 a.m. to 5:00 p.m.
   ROOM: 415
   PROGRAM: This meeting will review applications submitted for the Youth Projects Program, submitted to the Division of General Programs, for projects beginning after January 1, 1987.
7. DATE: July 24-25, 1986
   TIME: 8:00 a.m. to 5:00 p.m.
   ROOM: 415
   PROGRAM: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, submitted to the Division of General Programs, for projects beginning after January 1, 1987.

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

For further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 86-13657 Filed 6-16-86; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-251]

Florida Power and Light Co.; (Turkey Point Plant, Unit No. 4); Exemption

I

Florida Power and Light Company (the licensee) is the holder of Facility Operating License No. DPR-41 which authorizes the operation of the Turkey Point Plant, Unit No. 4 (the facility) at steady-state power level not in excess of 2200 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Dade County, Florida.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R.

The licensee received the alternate shutdown safety evaluation in April 1984. The first refueling commencing 180 days after the approval was the cycle 10 refueling outage.

By letters dated October 11, 1985 and April 4, 1986, the licensee requested schedular extensions for the completion of the following fire protection items for Unit 4 and common areas.

1. Cable reroute.
2. Penetration seals.
3. Raceway (conduit protection) by fire rate barriers.
4. Alternate Shutdown System including common procedures and areas (control room, cable spreading room and the Auxiliary Building northsouth breezeway).

III

Reasonable interim compensatory measures for fire protection and post-fire safe shutdown capability must be provided in order to grant schedular exemptions from the implementation schedules defined in 10 CFR 50.48.

The licensee will implement compensatory measures prior to startup from the current refueling outage as detailed in the schedular exemption requests dated October 11, 1985 and April 4, 1986, which include roving fire watches until completion of the fire protection work identified in the exemption. The roving watch enters each area where compensatory measures are required every 20 minutes.

All procedures and training required for the fire watches for each area identified in the exemption have been completed. The fire watches will identify any indication of fire, smoke or burning odor and will immediately notify the control room; in addition, the watches have been trained in the use of portable fire extinguishers.

If a fire should occur within any fire area monitored by the roving fire watch patrols, there is reasonable assurance that the fire will be detected in its incipient stage before significant flame propagation or temperature rise occurs. Upon discovery of a fire, the control room will be immediately notified and a fire brigade response initiated. The fire patrols and watches will be capable of controlling or suppressing the fire to minimize damage pending arrival of the fire brigade.

The projected status for completion of Appendix R fire protection work for Unit 4 and common areas as of April 1, 1986 is as follows:

1. Cable rerouting: June 1986.
2. Penetration seals: June 1986.
3. Raceway (conduit protection): September 1986.
4. Alternate shutdown (including common procedures and areas): prior to startup for Cycle 12.

All other Appendix R related items will be completed for Unit 4 prior to the startup from the current refueling outage.

The above schedule represents a best effort under the circumstances by the utility. Since 1980, the utility has spent over 50 million dollars in Appendix R modifications and has proceeded expeditiously to resolve technical open items and in completing modifications. The licensee is currently 95 percent complete with Appendix R modifications. The licensee has been delayed in completing all modifications because of the lack of available, approved 3-hour fire rated barrier material and the lack of available qualified equipment for the alternate shutdown panel. Each of these delays was beyond the control of the licensee.

IV

Based on the considerations and current status of the fire protection related work discussed above, the staff has concluded that the licensee has provided a sound rationale for the need of schedular relief; a best effort is being expended to complete the Appendix R related work; the utility has proceeded expeditiously to meet the Commission's requirement; delays were caused by circumstances beyond the utilities control; and reasonable and acceptable interim measures for fire protection and alternate shutdown capability to support the requested schedular exemption have been provided. Therefore, based on our evaluation, the staff has concluded that the requested schedular exemption from the requirements of 10 CFR 50.48(c)(4) should be granted.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the schedular exemption requested by the licensee's letters of October 11, 1985 and April 4, 1986, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption, namely that the exemption provides only temporary relief from the schedular requirements of 10 CFR 50.48(c) and the licensee has made good faith efforts to comply with the schedules in 10 CFR 50.48(c).

The Commission hereby grants the licensee exemption from the schedular requirements of 10 CFR 50.48(c)(4) for the following items and duration:

1. Cable rerouting: June 1986.
2. Penetration seals: June 1986.
3. Raceway (conduit protection): September 1986.
4. Alternate shutdown (including common procedures and areas): prior to startup for Cycle 12.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (51 FR 20906), dated June 9, 1986.

For further details with respect to this action, see the requests for exemption dated October 11, 1985 and April 4, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 9th day of June, 1986.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86-13662 Filed 6-16-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443 and 50-444]

Public Service Company of New Hampshire et al [1] Issuance of Amendment to Construction Permits

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 7 to Construction Permits Nos. CPPR-135 and CPPR-136 for the Seabrook Station, Units 1 and 2. The amendments modify the construction permits to reflect issuance, by the Commission, of an Exemption, dated November 22, 1985, from the requirements of 10 CFR part 50, Appendix A, General Design Criterion 4 with respect to installation of certain protective devices and consideration of certain dynamic effects.

Effective May 12, 1986, General Design Criteria (GDC) 4 of Appendix A to 10 CFR 50 has been modified to exclude from the design basis the protection of structures, systems, and components against the dynamic effects associated with postulated pipe ruptures of primary coolant loop piping in PWRs when analyses demonstrate the probability of rupture of such piping to be extremely low under design basis conditions (51 FR 12502 April 11, 1986). However, the exemption to which this amendment relates was granted by the NRC on November 22, 1985, which was before the effective date of the rule change. The amendments are effective as of the date of issuance.

The application for the amendments comply with the standards and requirements of the Atomic Energy Act

[1] The current construction permit holders for Seabrook Station are: Bangor Hydro-Electric Company, Canal Electric Company, Central Maine Power Company, Central Vermont Public Service Corporation, Connecticut Light & Power Company, Fitchburg Gas & Electric Light Company, Hudson Light and Power Department, Maine Public Serivce Company, Massachusetts Municipal Wholesale Electric Company, Montaup Electric Company, New England Power Company, New Hampshire Electric Cooperative, Inc., Public Service Company of New Hampshire, Taunton Municipal Lighting Plant, the United Illuminating Company, Vermont Electric Generation and Transmission Coopertive, Inc., and Washington Electric Cooperative, Inc.

of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which is set forth in the amendments. Prior public notice of these amendments were not required, since the amendments do not involve a significant hazards consideration.

For further details with respect to the action, see (1) the application for amendments dated August 9, 1984, February 1, 1985, and July 10, 1985, (2) Amendments No. 7 to Construction Permits CPPR–135 and CPPR–136, (3) the Commission's related Safety Evaluation, (4) the Exemption dated November 22, 1985, and (5) the Notice of Environmental Assessment and Finding of No Significant Impact dated November 12, 1985. All of these items are available for Public inspection at the Commission's Public Document Room 1717 H Street, NW. Washington, DC 20555, and at the Local Public Doicument Room at Exeter public Library, Front Street, Exeter, New Hampshire 03833. In addition, a copy of items (2), (3), (4), and (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 9th day of June 1986.

For the Nuclear Regulatory Commission.

Vincent S. Noonan,

Director, PWR Project Directorate No. 5, Division of PWR Licensing-A.

[FR Doc. 86–13663 Filed 6–16–86; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, July 10, 1986

Thursday, July 17, 1986

Thursday, July 24, 1986

Thursday, July 31, 1986

These meetings will start at 10 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415 (202) 632–9710).

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 86–13457 Filed 6–16–86; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–15141; File No. 812–6255]

Lazard Special Equity Fund, Inc., et al.; Application Permitting an Affiliated Purchase and Sale of Securities

June 10, 1986.

Notice is hereby given that Lazard Special Equity Fund, Inc. (the "Fund"), EDGE Investors Limited Partnership ("EDGE") and Marianne Gerschel ("Gerschel") (collectively, "Applicants"), One Rockefeller Plaza, New York, NY 10020, filed an application on December 11, 1985, and amendments thereto on April 18 and May 28, 1986, pursuant to Section 17(b) of the Investment Company Act of 1940 (the "Act"), for an order of the Commission exempting from the previous provisions of Section 17(a) of the Act the Fund's proposed sale of shares of its common stock to EDGE and Gerschel in exchange for the portfolio securities held by EDGE and an account of Gerschel held at Lazard Freres & Co. (the "Gerschel Account"). All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below and to the Act and rules thereunder for the text of the relevant statutory provisions.

Applicants state that the Fund, a Maryland corporation, is an open-end, diversified management investment company whose investment objective is to seek capital appreciation through a policy of investment primarily in equity securities of companies that are believed by Lazard Freres Asset Management, an operating division of Lazard Freres & Co. ("Lazard"), which serves as Manager of the Fund, to be undervalued in the market place in relation to factors such as the respective companies' assets, earnings, earning power or growth potential. Applicants state that Lazard also acts as investment adviser of EDGE, a Delaware limited partnership, which has investment policies substantially similar to the Fund as evidenced by the description of the investment policies of EDGE in its Private Placement Memorandum on file with the Commission. Applicant states that Lazard also acts as Gerschel's investment adviser and that the portfolio of securities held by the Gerschel Account is substantially similar to EDGE's portfolio. On the basis of the above, Applicants assert that the Fund, EDGE and the Gerschel Account

can be seen to have substantially identical investment objectives.

According to the application, certain officers of Lazard, namely Charles Dreifus, Norman Eig and Herbert Gullquist (each of whom also is a general partner of EDGE and a director of the Fund) ("Interested Directors"), concluded that it would be in the best interests of the Fund, the EDGE limited partners and Gerschel if their investments were all managed in one fund. Applicants state that it would be more efficient to manage and invest the portfolios of the Fund, EDGE and Gerschel in one account rather than to manage three different accounts. Further, Applicants state that the limited partners of EDGE and Gerschel, by owning shares in a publicly traded investment company, would have greater liquidity in their investments.

Applicants state that on December 2, 1985, EDGE owned a portfolio of securities valued at approximately $11.7 million and the Gerschel Account owned a portfolio of securities valued at approximately $2.5 million. Applicants further state that the Fund proposes to sell shares of its common stock to EDGE and the Gerschel Account in exchange for the portfolio securities held by EDGE and the Gerschel Account. Applicants believe that the securities held by EDGE and the Gerschel Account are desirable securities for the Fund, meeting the Fund's investment policies, except to the extent such securities are fully priced or, if already owned by the Fund, would create too large a position for the Fund in a particular security. Applicants state that any securities which the board of directors of the Fund ("Board"), including a majority of directors who are not interested persons as defined in the Act ("Disinterested Directors"), considers fully priced and without significant potential for further appreciation will not be purchased, nor will the Fund purchase any security already held by it to the extent that additional purchases will create, in Lazard's opinion, too large a holding by the Fund in such security. The Fund currently expects to purchase nine to twelve million dollars of the portfolio securities held by EDGE and the Gerschel Account. EDGE will distribute the shares of the Fund it receives and any cash on hand to its partners according to their respective partnership interests.

Applicants concede that they are affiliated persons of each other within the meaning of section 2(a)(3) of the Act. Thus, Applicants submit that the proposed purchase and sale of securities between the Fund and EDGE and the Fund and the Gerschel Account may be prohibited under section 17(a) of the Act, absent an exemption pursuant to section 17(b).

According to the application, the Board met with counsel to the Fund and Lazard on April 4, 1986, to consider the desirability of the proposed purchase and sale transaction from the point of view of the Fund. According to the application, the principal purpose of the meeting was to discuss all aspects of the proposed transaction to determine whether it made business sense from the point of view of the Fund and that its terms and procedures were designed to meet the criteria required by section 17(b) of the Act. Counsel to the Fund reviewed with the Board the provisions of section 17(a) and (b) of the Act and the considerations thereunder. Applicants represent that the three Disinterested Directors present at the meeting considered whether, since counsel to the Fund is also counsel to Lazard they should retain an independent outside counsel to advise them on the proposed transaction. The Disinterested Directors determined that they were capable of applying their business judgment and experience to structuring and ultimately approving or disapproving the transaction and assessing the financial implications for the Fund without the assistance of additional lawyers and that it would be a waste of the Fund's assets to retain counsel.

Applicants state that the Disinterested Directors first established that if the proposed sale of Fund shares to EDGE and Gerschel were not approved, the present intention of the Gerschel Account and of a significant number of the EDGE partners was to sell their portfiolos and invest the cash proceeds in the Fund. Applicants state that the cash would then come into the Fund in the same manner as from new stockholders and reinvested in the portfolio securities meeting the Fund's objectives and policies. Applicants represent that based on their experience and discussions with officers of the Fund, the Disinterested Directors concluded that the difficulty and cost to the Fund of investing nine to twleve million dollars of new cash in the type of securities held by EDGE and the Gerschel Account would be more costly and less desirable than the opportunity to get the same securities all at one time in exchange for the issuance of the Fund's shares. Applicants further represent that the Disinterested Directors considered several factors when they reviewed the proposed transaction (such as price, portfolio selection, early redemptions and the allocation of expenses) in determining that the proposed transaction would be fair and superior to receiving cash and reassembling the same portfolio. The Disinterested Directors specifically noted that the Fund would incur substantial brokerage and other transaction costs in making open market purchases of the securities it could acquire in the proposed transaction.

Applicants represent that the Fund propose to purchase securities owned by EDGE and the Gerschel Account at the independent "current market price" of each security, as defined by Rule 17a-7 under the Act, with the exception described in the following sentence, which was established as a condition to the transaction by the Board, including a majority of the Disinterested Directors. In the event the Fund purchases a portion but not all of a security held by EDGE or the Gerschel Account, the remaining portion will be sold into the open market prior to the Fund's purchase and the Fund will purchse its portion at a price equal to the *lower* of (i) the sale price of the shares previously held by EDGE or the Gerschel Account and so sold and (ii) the "current market price", as defined in Rule 17a-7 under the Act. No brokerage commission, fee (except for customary transfer fees), or other remuneration will be paid in connection with the proposed transaction. The Disinterested Directors found it significant that in all cases the prices of the securities to be transferred could be independently checked and would involve no appraisals but would be independent market prices.

Secondly, Applicants represent that the Disinterested Directors satisfied themselves that a particular security and the amount thereof purchased would meet the objectives and policies of the Fund because of the identity of objectives and policies between EDGE and the Gerschel Account and the Fund, the parallelism already existing in the portfolios and the definitiveness of the characteristics of appropriate securities for the Fund's portfolio. The Disinterested Directors further found that there would be no advantage to EDGE and the Gerschel Account in having inappropriate securities transferred to the Fund. Based on the advantages to the Fund and the considerations listed above, the Disinterested Directors did not believe the possibility of Lazard making an adverse selection to be a realistic risk.

In addition, the Disinterested Directors reviewed the possibility that Gerschel and the EDGE partners could

decide to invest in Fund shares and immediately redeem such shares with the purpose of shifting the brokerage cost of liquidating their portfolios from themselves to the Fund. Applicants state that Lazard made it clear to the Disinterested Directors that there was every reason to believe, barring some unexpected change of circumstances, that Gerschel and the EDGE partners investing in Fund shares would be long term investors. Moreover, if substantial unexpected redemptions from the Gerschel Account or EDGE partners do occur, the Fund intends to pay such redemptions in kind to avoid associated brokerage costs.

Finally, the Disinterested Directors discussed the allocation of costs of the proposed transaction. Lazard has agreed that it would pay all expenses of the transaction, which were identified as being the nominal transfer costs of the transfer of the portfolio securites to the Fund's custodian, the cost of issuing the Fund's shares in consideration therefore and legal fees and expenses involved in the exemptive application process.

It is also stated in the application that the Disinterested Directors present at the meeting expressed their strong view that, in their business judgment, the proposed transaction was a very desirable transaction for the Fund and unanimously approved the transaction as being in the best interests of the Fund and meeting the criteria of being fair and reasonable and not involving overreaching. The Interested Directors abstained from voting on the matter. Applicants further assert that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; are consistent with the policy of the Fund as recited in its registration statement; and are consistent with the general purposes of the Act.

Notice is Further Given that any interested person wishing to request a hearing on the application may, not later than July 1, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13589 Filed 6-16-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15142; File 812-6304]

Application and Opportunity for a Hearing; Provident Mutual Life Insurance Company of Philadelphia et al.

June 10, 1986.

Notice is hereby given that Provident Mutual Life Insurance Company of Philadelphia ("PMLIC"); Provident Mutual Variable Growth Separate Account ("Separate Account I"), Provident Mutual Variable Money Market Separate Account ("Separate Account II"), Provident Mutual Variable Bond Separate Account ("Separate Account (III"), Provident Mutual Variable Managed Separate Account ("Separate Account (IV"), Provident Mutual Variable Zero Coupon Bond Separate Account ("Separate Account (V"), (collectively the "Separate Accounts"), which are registered as a unit investment trust under the Investment Company Act of 1940 ("Act"); and PML Securities Company, as principal underwriter for the PMLIC contracts described below (collectively, "Applicants"), 1600 Market Street, Philadelphia, Pennsylvania 19103, filed an application on February 13, 1986, and amendments thereto on April 10, and May 28, 1986 for an order of the Commission pursuant to Section 6(c) of the Act exempting Applicants from the provisions of sections 2(a)(32), 2(a)(35), 11(a), 22(c), 26(a), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d) and 27(f) of the Act and certain provisions of Rules 6e-2, 22c-1 and 27f-1 thereunder, to the extent necessary to permit the issuance of modified premium variable life insurance contracts ("Contracts") as described below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for the text of the relevant provisions.

Background

Applicants state that Separate Accounts I through IV invest in portfolios of the Market Street Fund, Inc. Separate Account V has several sub-accounts each of which invests in a different series of the Provident Mutual Series of Stripped ("Zero") U.S. Treasury Securities Fund ("Zero Coupon Trust").

Applicants state that the contracts provide for scheduled premium payments which, if paid, guarantee that the contract will not lapse even if adverse investment experience results in no cash value. Additional premiums must be paid for supplemental benefits and for contracts issued on a substandard basis. Applicants also state that unscheduled premiums may be paid at any time, provided the contract is not in default and subject to the limitation that overdue scheduled payments must first be repaid from any unscheduled premium. A "Vanishing Premium Provision" provides that if cash value exceeds the net single premium which, if paid in one sum, will (based on certain assumptions regarding insurance rates, expenses, death benefit levels and interest rates) keep the contract in force until maturity, the contractowner can skip scheduled premium payments for the following contract year without causing the contract to lapse.

Applicants state that a grace period of 61 days after the due date will be allowed for payment of each premium after the first. Applicants also state that if an over-due premium remains unpaid at the end of the grace period (assuming the Vanishing Premium Provision is not in operation) and is not paid under the automatic premium loan provision the contract will lapse.

Applicants explain that the basic death benefit at any time equal to the greatest of: (1) the face amount; (2) the face amount plus the excess of the current cash value over the single premium described above; and (3) the contract's cash value times the death benefit factor which depends on the insured's sex, attained age and smoker/nonsmoker classification. Applicants maintain that this death benefit factor will be calculated using the 1980 Commissioners' Standard Ordinary Mortality Table with smoker/nonsmoker modifications and 4% interest. Applicants maintain that the minimum guaranteed death benefit is equal to the face amount minus any indebtedness.

Applicants state that the contractowner may transfer all or part of the cash value in one of the Separate Accounts to any of the others without charge up to four times each contract year. The contract may be surrendered for its net cash surrender value at any time. A partial withdrawal of cash value

may be made only to the extent that the cash surrender value (the cash value decreased by by surrender charge) exceeds an attained age net single premium.

Applicants explain that charges for supplemental benefits and substandard extras ordinarily are deducted from scheduled premiums (unless, under the Vanishing Premium Provision, such premiums were not paid, in which event charges are deducted from cash value). A "premium expense charge" then will be deducted from each schduled base premium and each unscheduled premium payment. Applicants also explain that the premium expense charge consists of a sales charge of 5% of each premium payment, a charge of 2.5% of each premium payment to compensate PLMC for paying state premium taxes, and a charge of $1.00 to cover the cost of collecting and processing premiums.

Applicants state that the monthly deduction from cash value includes the cost of insurance charge, the monthly administrative charge, the first year monthly contract charge and the death benefit guarantee charge. Cost of insurance rates will be based on the insured's sex, attained age and smoking status. Applicants state that these rates will not be greater than the rates based on the 1980 Commissioners' Standard Ordinary Mortality Table with Smoker/Nonsmoker Modifications. Applicants indicate that the monthly administrative charge is equal to $3.25 per contract plus $.015 per $1000 of face amount. The first year monthly contract charge will be $5 per contract per month. Applicants also indicate a death benefit guarantee charge of $0.01 per $1000 of face amount will be deducted from the cash value as part of the monthly deduction.

Applicants state that during the first nine contract years, a surrender charge consisting of a contingent deferred administrative charge and a contingent deferred sales charge will be deducted from the net cash value if the contract is surrendered or stays in default past its grace period. The contingent deferred administrative charge will be $5.00 for each $1000 of face amount on surrenders or lapses occurring on or before the contract's fifth anniversary. Applicants also state that for contracts that surrender or lapse in contract years 6, 7, 8, and 9 the deferred administrative charge will be $4, $3, $2 and $1 per $1000 of face amount, respectively. The contingent deferred sales charge ("CDSL") is applied to the lesser of scheduled base premiums due to date (including such premiums not actually paid because the vanishing premium provision was in effect) or the total premiums paid to date. Applicants indicate that the maximum CDSL equals 25% of the first year's scheduled premium payments and 5% of the scheduled premium payments for the next four contract years. The CDSL will then be reduced each year until it becomes zero in contract year 10 and thereafter.

According to the application, a mortality and expense risk charge at an effective annual rate of 0.60% is made against the assets of all five Separate Accounts. In addition, an asset charge of up to an effective annual rate of .50% is made against Separate Account V to cover transaction costs incurred in purchasing units of the Trust. Charges for income taxes may be imposed if it becomes appropriate.

Applicants state that the contractowner may return the contract to PMLIC within the latest of 10 days after the contract is received, 45 days after Part 1 of the application was signed, or 10 days after PMLIC mails the notice of cancellation right. Applicants also state that upon returning the contract the contractowner will receive a refund equal to the value of the amounts in the Separate Accounts when the request is received, plus any charges which were deducted from purchase payments or assets of the Separate Accounts. However, if applicable state law so requires, the contractowner who exercises this right will receive a refund of all purchase payments made.

Rule 6e–2

Applicants request an exemption from paragraph (c)(1) of Rule 6e–2 to the extent necessary to treat the contract as a "variable life insurance contract" within the definition contained in the paragraph. Applicants state that the death benefit will remain fixed in the face amount and will not vary with the investment results of the separate accounts unless the cash value is sufficiently great that it exceeds the single premium necessary to trigger the Vanishing Premium Provision or the cash value multiplied by the death benefit factor exceeds the face amount.

Applicants submit that the considerations which led the Commission to adopt Rule 6e–2 apply equally to the Accounts and the contracts. Also, Applicants point out that the Contracts contain other provisions not specifically addressed in Rule 6e–2 such as the allowance of unscheduled premiums and the vanishing premium provision. Applicants note that the contract provides for adjustment of death benefit on date of death and further, among the types of variable life insurance contracts that have already been issued in reliance upon Rule 6e–2, the extent to which favorable investment experience is used to increase death benefits rather than cash values differs greatly. Under one form of contract design favorable investment experience can be used to increase death benefits by a larger amount than under another design while the converse becomes true for respective increases in cash values. Applicants contend that, so far as the protection of investors is concerned, the contract is an appropriate insurance and investment vehicle, and that satisfactory disclosure will provide the necessary protection.

Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(3), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rules 6e–2(b)(1), 6e–2(b)(12), 6e–2(b)(13), 6e–2(c)(4), and 22c–1

Applicants request exemption from the above sections and rules thereunder to the extent necessary to permit part of the sales load to be deducted from each premium payment and the remainder to be in the form of a CDSL.

Applicants maintain that relief is appropriate because imposition of part of the sales load charge in the form of a CDSL is more favorable to the contractowner than a charge that is deducted entirely from the premium. Applicants assert that under the CDSL the amount of investors' money available for investment is not reduced as in the case of a front-end sales load; that the total amount of sales load charged to any contractowner under Applicants' proposed sales load structure is lower than that permitted by Rule 6e–2(b)(13) and for contractowners who do not lapse or surrender in the early years, it is lower than it would be if it were taken entirely from purchase payments; that no CDSL is taken when death benefits are paid; and that the sales load structure of the contract provides greater equity between both surrendering and persisting contractowners. Applicants also assert that all contractowners, including those who surrender or lapse, benefit from lower costs of insurance deductions that would result had sales charges been deducted from premium payments because a CDSL results in a decrease in the net amount at risk and therefore lower monthly cost of insurance coverage.

Sections 27(a)(1) and Rule 6e–2(b)(1), 6e–2(b)(13), and 6e–2(c)(4)

Applicants request exemption from Section 27(a)(1) and Rules 6e–2(b)(1), 6e–2(b)(13), and 6e–2(c)(4) on the same

terms specified in Rule 6e–2(b)(13) and 6e–2(c)(4) except that life expectancy and the deduction for the cost of insurance in determining what is deemed to be sales load shall be based upon the 1980 Commissioners' Standard Ordinary Mortality Table ("1980 CSO Table"). Applicants state that, with some exceptions, the use of the 1980 CSO Table generally results in lower cost of insurance deductions than the use of the 1958 CSO Table.

Sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2), and 27(d) and Rules 6e–2(b)(12), 6e–2(b)(13), and 22c–1

Applicants request exemption from the above Sections and Rules to the extent necessary to permit an administrative charge to be deducted on a contingent deferred basis.

Applicants state that imposition of the administrative charge in this form is more favorable to contractowners than a charge that is deducted entirely from premiums or cash value in the first contract year. First, Applicants maintain that the amount of the contractowner's investment in the separate account is not reduced as it is when this charge is taken in full from the first year premium payments. Second, Applicants maintain that the total amount charged to any contractowner is no greater than if this charge were taken in full in the first contract year, and it is less for contractowners who do not lapse or surrender during the first five contract years. Third, Applicants maintain that all contractowners are advantaged because the cost of insurance charges will be lower than they would have been had the administrative charge for issuance expenses been deducted during the first year. Finally, Applicants maintain that all contractowners receive the primary benefit of the contracts—insurance protection—without incurring this administrative charge prior to surrender or lapse and no such charge is deducted from the death benefit payable under the contracts. Applicants represent that this deferred administrative charge is cost-based, that no profit is anticipated to result from it, and that it is no higher than it would have been if it was designed as a charge to purchase payments or as a periodic charge. In particular, Applicants represent that this charge does not take into account the time value of money or the fact that most contractowners will not surrender or lapse during the first nine years of the contract.

Section 27(f) and Rules 6e–2(b)(13)(viii) and 27f–1

Applicants request exemption from the provisions of section 27(f) of the Act and Rules 6e–2(b)(13)(viii) and 27f–1 on the terms specified in Rule 6e–2(b)(13)(viii) except that the amount payable to the contractowner pursuant to exercise of the short-term cancellation right provided in Rule 6e–2(b)(13)(viii) may be adjusted to reflect investment experience. Applicants argue that it is consistent with the policies of section 27(f) to have the contractowner bear the risk and enjoy the benefit of investment experience during the "free-look" period. Applicants note that although Rule 6e–2(b)(13)(viii) requires a return of premium payments, this is not significant in a context in which, because of scheduled premium payments and high first year charges, the amount invested on behalf of the contractowner is very small. By contrast, larger than scheduled premium payments may be made under the contracts. Therefore, conclude Applicants, material appreciation or depreciation in the contractowner's account could occur during the "free-look" period.

Section 11

Applicants request an order under section 11 of the Act, to the extent provided by Rule 11a–2(b) for contracts that do not involve both a front-end sales load and deferred sales load, approving transfers of the assets related to the contracts among the various Accounts and subaccounts. Applicants state that such transfers will be made without a CDSL or other charge and that such transfers do not affect a contractowner's cash values or the length of time such values have been supporting the Contract for purposes of the CDSL or contingent deferred administrative charge.

Sections 26(a) and 27(c)(2) and Rule 6e–2

Applicants request exemption from sections 26(a) and 27(c)(2) of the Act and Rule 6e–2 to the extent necessary to permit deduction from cash value of cost of insurance charges, including those for supplemental benefits and substandard extras when the Vanishing Premium Provision is in effect, and the minimum death benefit guarantee risk charge.

PMLIC represents that the risk charge is reasonable in relation to the risks assumed. PMLIC undertakes to keep and make available to the Commission a memorandum, and other documentation used to support this representation. PMLIC has concluded that there is a reasonable likelihood that the distribution financing arrangement will benefit the Separate Accounts and contractowners, and will keep and make available to the Commission a memorandum setting forth the basis for this representation. Applicants also represent that the Separate Accounts will not invest in management investment companies that have not undertaken to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 2, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86–13590 Filed 6–16–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23314; File No. SR–NASD–86–13]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Amendment to Schedule G of the NASD By-Laws

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 16, 1986, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to section 1(c) of Schedule G of the NASD By-Laws amends the definition of "designated

reporting member" to include all members that are registered as Third Market Makers in eligible securities pursuant to Part III of Schecule D of the NASD By-Laws.

II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV, below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C), below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed amendment to section 1(c) of Schedule G of the NASD By-Laws is to eliminate an apparent inconsistency between Schedule G and a Notice to Members published on September 5, 1980, with respect to the definition of "Designated reporting member." Under existing Schedule G, the definition of "designated reporting member" includes members that request reporting member status or members designated by the NASD as reporting members based on their execution of a "substantial number" of over-the-counter transactions in eligible securities. However, in the 1980 Notice to Members, the NASD stated that all members registered as CQS market makers in eligible securities were automatically designated as reporting members.

The proposed amendment to section 1(c) of Schedule G defines "designated reporting member" to include all member firms that are registered as Third Market Makers in eligible securities pursuant to Part III of Schedule D of the NASD By-Laws. The Board of Governors determined it appropriate to eliminate the designation of reporting members on the basis of a "substantial number" of over-the-counter transactions in eligible securities in view of the difficulty in applying that standard. The Board also determined it appropriate to delete the list of designated reporting members from Schedule G as a result of the administrative difficulties of keeping the list current.

The proposed amendment is consistent with section 15A(b)(6) of the Securities Exchange Act of 1934, which provides that the rules of a registered securities association are designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendment to Schedule G will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicted nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determining whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submission should be refer to the file number in the caption above and should be submitted by July 8, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 10, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13591 Filed 6-16-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974; Notice of Proposed Changes to Notices of Systems of Records

The Department of Transportation herewith publishes a proposal to correct the System Location, change the System Manager, and expand the Categories of Records and Routine Uses section of DOT/OST 013, Employee Management Convenience Files—Office of the Inspector General; DOT/OST 100, Investigative Record System DOT/OIG; and DOT/OST 101, Office of the Inspector General, Management Information Systems (OIG/MIS).

Any person or agency may submit written comments on the proposed new system and changes of the existing systems to the Privacy Act Officer (M-34) Room 7109, Washington, D.C., 20590. Comments must be received by June 30, 1986, to be considered.

If no comments are received, the proposed changes will become effective in 60 days. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, D.C. June 10, 1986.

Jon H. Seymour,

Assistant Secretary for Administration.

Narrative Statement for the Department of Transportation Office of the Secretary Alteration of Office of Inspector General Employee Management Convenience Files

The Department of Transportation proposes to revise the Office of Inspector General Employee Management Convenience Files system of records. The revision is necessary to: (1) Correct the system locations; (2) change the system manager; and (3)

expand categories of records and routine uses.

The Office of Inspector General of the Department of Transportation maintains these records in fulfillment of its personnel responsibilities.

The maintenance of these records is directed by DOT regulation 49 CFR, Part 10, implementing the Privacy Act of 1974.

The purpose of this report is to comply with Office of Management and Budget Circular No. A–130, "Management of Federal Information Resources," dated December 12, 1985.

DOT/OST 013

SYSTEM NAME:

Employee Management Convenience Files—Office of Inspector General

SYSTEM LOCATION:

Office of Inspector General, DOT/OST, 400 Seventh Street, SW., Washington, D.C. 20590
Office of Inspector General, DOT/OST, Kendall Square, 55 Broadway, Room 1055, Cambridge, MA 02142
Office of Inspector General, DOT/OST, 26 Federal Plaza, Room 14–130, New York, NY 10278
Office of Inspector General, DOT/OST, 31 Hopkins Plaza, Room 1628, Baltimore, MD 21201
Office of Inspector General, DOT/OST, Suite 376, 1718 Peachtree Road, NW., Atlanta, GA 30309
Office of Inspector General, DOT/OST, 165 N. Canal Street, Room 1400B, Chicago, IL 60606
Office of Inspector General, DOT/OST, Federal Office Building, Room 9A27, 819 Taylor Street, Fort Worth, TX 76102
Office of Inspector General, DOT/OST, 601 East 12th Street, Room 113, Kansas City, MO 64106
Office of Inspector General, DOT/OST, 211 Main Street, Suite 1022, San Francisco, CA 94105
Office of Inspector General, DOT/OST, Federal Office Building, Room 644, 915 Second Avenue, Seattle, WA 98174.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Performance Evaluation Records, Position Descriptions, SF–171s, and Employee Relations Documents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Employment, pay, performance evaluations, and employee conduct.

Used by supervisor and administrative personnel in preparation of personnel documents. See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Safe and File cabinets.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Locked safe and files.

RETENTION AND DISPOSAL:

Retained for current employment. Destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Policy, Planning, and Resources (Jp–1), Office of Inspector General, Department of Transportation, 400 Seventh Street, SW., Room 9210, Washington, D.C. 20590.

NOTIFICATION PROCEDURE:

Same as "System Manager."

RECORD ACCESS PROCEDURES:

Current employees may have access to contents through the System Manager.

CONTESTING RECORD PROCEDURES:

Current employees may contest contents through the System Manager.

RECORD SOURCE CATEGORIES:

Subject, supervisor, responsible official, personnel and payroll offices.

Narrative Statement for the Department of Transportation Office of the Secretary Alteration of Investigative Record System DOT/OIG

The Department of Transportation proposes to revise the Office of Inspector General Investigative Record System. The revision is necessary to: (1) Update the retention and disposal schedule; (2) change the system manager; and (3) make editorial changes to the previously published system of records.

The Office of Inspector General of the Department of Transportation maintains these records in fulfillment of its mission to conduct and supervise audits and investigations relative to the programs and operations of the Department.

The maintenance of these records is directed by DOT regulation 49 CFR, Part 10, implementing the Privacy Act of 1974.

The purpose of this report is to comply with Office of Management and Budget Circular No. A–130, "Management of Federal Information Resources," dated December 12, 1985.

DOT/OST 100

SYSTEM NAME:

Investigative Record System DOT/OIG.

SYSTEM LOCATION:

Office of Inspector General, DOT/OST, 400 Seventh Street, SW., Washington, D.C. 20590

OIG Regional Office in Baltimore, MD; Atlanta, GA; Chicago, IL; Fort Worth, TX; San Francisco, CA; and Federal Records Center (FRC), Washington, D.C.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former DOT employees, DOT contractors and employees as well as grantees, sub-grantees, contractors, subcontractors and their employees and recipients of DOT monies, and other individuals or incidents subject to investigation within the purview of the Inspector General Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of investigations and inquiries conducted by Inspector General (OST); reports of investigations conducted by other departmental, Federal, state, and local investigative agencies which relate to the mission and function of the Inspector General; reports and indices relating to "hotline" complaints; and investigative case index card files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in the Investigative Records System is collected and maintained in the administration of the Inspector General Act of 1978 (Pub. L. 95–452) to investigate, prevent, and detect fraud and abuse in departmental programs and operations. Material gathered is used for prosecutive, civil, or administrative actions. These records may be disseminated, depending on jurisdiction to:

DOT Officials in the administration of their responsibilities. Other Federal, state, local or foreign agencies or administrations, having interest or jurisdiction in the matter. See also Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in case folders in manual filing system and on index cards.

RETRIEVABILITY:

By name or incident title.

SAFEGUARDS:

Investigative files and case index files are maintained in several spaces with appropriate access controls. Access to investigative files is restricted to authorized personnel on a "need to know" basis.

RETENTION AND DISPOSAL:

Investigative material is destroyed by secure means used for classified materials. Central OIG investigative files are maintained in OIG Headquarters, from where the files are transferred to the FRC Washington, D.C., at prescribed intervals and destroyed in accordance with the following schedule:

Lead Cases. Case files and temporary contents are destroyed 180 days after transmittal of the investigative report and permanent case documents to the case control office.

Official Case Folders. Official Investigative Case Folders are maintained for a period of 2 years in OIG Headquarters upon completion of legal or administrative action and transferred to the FRC Washington, D.C., where they are held and destroyed 10 years from the date of receipt by FRC Washington, D.C.

Investigative and Hotline Indices. Destroyed 20 years after date of creation.

OIG Hotline Files. Transferred to FRC Washington, D.C., 2 years after completion of legal or administrative action. Destroyed 10 years from date of receipt by FRC Washington, D.C.

General Investigative and Hotline Files. Retained in OIG Headquarters and Field Offices. Destroyed when 5 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations (JI-1), Office of Inspector General, Department of Transportation, 400 Seventh Street, SW., Room 9210, Washington, D.C. 20590.

NOTIFICATION PROCEDURE:

Same as "System Manager."

RECORD ACCESS PROCEDURES:

Same as "System Manager." Investigative data compiled for law enforcement purposes may be exempt from the access provisions pursuant to 5 U.S.C. 552a (j)(2), (k)(1), or (k)(2). The identity of an employee or other personal source who makes a complaint or provides information to the OIG via the OIG "Hotline" complaint center may be exempt from disclosure pursuant to Section 7(b) of the Inspector General Act of 1978 (Pub. L. 95-452).

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

These records contain information obtained from interviews, review of records and other authorized investigative techniques.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Investigative data compiled for law enforcement purposes may be exempt from the access provisions pursuant to 5 U.S.C. 552a (j)(2), (k)(1), or (k)(2).

Narrative Statement for the Department of Transportation Office of the Secretary Alteration of Office of Inspector General Management Information System (OIG/MIS)

The Department of Transportation proposes to revise the Office of Inspector General Management Information System. The revision is necessary to: (1) Automate investigative records; (2) expand personnel records; (3) change the system location; (4) change the system manager; (5) add resource management reports and investigative case management to routine uses; and (6) make editorial changes to the previously published system of records.

The Office of Inspector General of the Department of Transportation maintains these records in fulfillment of its mission to conduct and supervise audits and investigations relative to the programs and operations of the Department.

Increased automation will provide more comprehensive and timely data for resource management, investigative case management, and other Office of Inspector General reports.

The maintenance of these records is directed by DOT regulation 49 CFR, Part 10, implementing the Privacy Act of 1974.

The purpose of this report is to comply with Office of Management and Budget Circular No. A-130, "Management of Federal Information Resources," dated December 12, 1985.

DOT/OST 101

SYSTEM NAME:

Office of Inspector General, Management Information System (OIG/MIS)

SYSTEM LOCATION:

Office of Inspector General, DOT/OST, 400 Seventh Street, S.W., Washington, D.C. 20590, Using Boeing Computer Services, Timesharing System, Vienna, VA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active employees of the OIG, with history data on previous employees maintained for 2 years. Present and former DOT employees, DOT contractors and employees as well as grantees, subgrantees, contractors, subcontractors and their employees and recipients of DOT monies, and other individuals or incidents subject to investigation within the purview of the Inspector General Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's current position and employment status, assignments, travel, experience, training, with the following personal data: Name, social security account number, date of birth, service computation date, career status, address, assigned station, job series, education, grade, minority status, and personnel transaction date. Investigative information consists of investigation targets' name and social security account number, organization name, type of investigation, offense data, source of referral data and action taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

There will be no external uses. Internally, information will be used as follows: (1) Security clearance notification alerts may be provided to an examined activity in advance of visits by OIG personnel if information to be examined requires a secret clearance or above; (2) time and attendance reports will be used to track temporary duty travel frequency and duration, to categorize indirect time for periodic reports, and to accrue staff hour data on assigned projects; (3) planned annual leave reporting will be used by various managers for workload planning and travel scheduling; (4) assingments information and workload status information will be used by managers to control audits and investigations, and to maximize effectiveness of staff resources; (5) miscellaneous personnel information will be used by staff managers to determine training needs, promotional eligibility, education and background, and professional organization participation; (6) information will be used to produce resource management reports; (7) travel information will be used by managers to control temporary duty travel, travel costs and issuances of travel orders; and (8) investigative information is collected and maintained in the administration of

the Inspector General Act of 1970 (Public Law 95–452) to investigate, prevent, and detect fraud and abuse in departmental programs and operations. Material gathered is used for investigative case management.

Used by DOT Officials in the administration of their responsibilities. See also Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active reports on magnetic disk, with backup active records and inactive records maintained on magnetic tape.

RETRIEVABILITY:

Records will be retrievable through employee social security number, by name, or incident title, with selected records having certain secondary keys consisting of certain other data elements, listed in the "Categories of Records in the System."

SAFEGUARDS:

(1) Records will be maintained in a private library not accessible by any unauthorized user; (2) authorized user identification codes will be tied to multiple password system to afford additional protection; (3) any attempt to bypass the password protection system will result in "Log-Off" from the system or denial of access to data if access to system is authorized; (4) physical access to system documentation, hard copy printouts, personal data files, and terminals will be restricted to authorized personnel by maintaining a secure environment in the headquarters office; (5) access to data will be restricted to thos who require it in the performance of their official duties and the individual who is the subject of the record (or authorized representative); and (6) tape files will be maintained in an environmentally secure vault area when not in use.

RETENTION AND DISPOSAL:

Records will be maintained for 2 years after they become inactive. All inactive records will be maintained on magnetic tape within the computer center and will be afforded the same safeguards as active records. Machine-resident records will be destroyed at the end of the 2-year period. Hard copy records will be retained until the records are replaced or become obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Policy, Planning, and Resources (JP–1), Office of Inspector General, Department of Transportation, 400 Seventh Street, SW., Room 9210, Washington, D.C. 20590.

NOTIFICATION PROCEDURE:

Same as "System Manager."

RECORD ACCESS PROCEDURES:

Same as "System Manager." Investigative data compiled for law enforcement purposes may be exempt from the access provisions pursuant to 5 U.S.C. 552a (j)(2), (k)(1, (k)(2). The indentity of an employee or other personal source who makes a complaint or provides information to the OIG via the OIG "Hotline" complaint center may be exempt from disclosure pursuant to Section 7(b) of the Inspector General Act of 1978 (Pub. L. 95–452).

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

(1) Official personnel folder; (2) other personnel documents; (3) activity supervisors; (4) individual applications and forms; and (5) information obtained from interviews, review of records and other authorized investigative techniques.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Investigative data compiled for law enforcement purposes may be exempt from the access provisions pursuant to 5 U.S.C. 552a (j)(2), (k)(1), or (k)(2).

[FR Doc. 86–13581 Filed 6–16–86; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Research, Engineering and Development Conference

The Department of Transportation hereby announces a Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Conference. This 2-day conference will commence at 9 a.m. on August 5, 1986, at the Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036. Pre-registration is recommended due to limited space.

The purpose of the conference is to present the FAA R,E&D Plan to the aviation community in draft form and to discuss the draft plan with conference attendees. This discussion is expected to solicit the views of individuals on R,E&D needs in general and the draft plan in particular. These individual views will provide guidance in completing the plan.

Copies of the draft plan will be distributed at the conference. In addition to views expressed during conference discussions, written comments on the draft plan will be accepted through September 5, 1986. Comments should be mailed to the addressed below.

Further information concerning the conference and/or pre-registration forms may be obtained from the Systems Studies/Advanced Concepts Division, AES–300, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 426–3008 or (202) 267–9850. Copies of the draft plan may be obtained from this address after August 6, 1986.

Issued in Washington, DC, on June 10, 1986.

Clyde A. Miller,

Manager, Systems Studies/Advanced Concepts Division, AES–300.

[FR Doc. 86–13562 Filed 6–16–86; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[BS-Ap-No. 2556]

Exemption Petition and Public Hearing; Burlington Northern

The Burlington Northern Railroad has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the traffic control signal systems between Big Stone City, South Dakota and Summit, South Dakota and between Aberdeen, South Dakota and Mobridge, South Dakota. This proceeding is identified as FRA Block Signal Application No. 2556.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on August 7, 1986, in the Community Room in the Court House Annex at 25 Market Street, Aberdeen, South Dakota.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their

initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on June 11, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-13671 Filed 6-16-86; 8:45 am]

BILLING CODE 4910-06-M

[RS&I-Ap-No. 1016]

Exemption Petition and Public Hearing; Seaboard System Railroad

The Seaboard System Railroad has petitioned the Federal Railroad Administration (FRA) seeking an exemption from the requirements of the last sentence of § 236.204 of the Rules, Standards and Instructions which reads, ". . . In absolute permissive block signaling, when a train passes a head block signal it shall cause the opposing head block signal to display an aspect with an indication not more favorable than "STOP"." This proceeding is identified as FRA Rules, Standards and Instructions Application No. 1016.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on July 24, 1986, in Room 162 of the South Tower at 1720 Peachtree Road, NW., in Atlanta, Georgia.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on June 11, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-13672 Filed 6-16-86; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

[General Counsel Designation No. 132]

Appointment of Members of the Legal Division to the Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101-5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the General Panel of the Legal Division Performance Review Board:

D. Edward Wilson, Deputy General Counsel, who shall serve as Chairperson;

Judith A. Denny, Counselor to the General Counsel;

Selig S. Merber, Assistant General Counsel (Enforcement);

Richard V. Fitzgerald, Chief Counsel, Office of the Comptroller of the Currency;

Marvin J. Dessler, Chief Counsel, Bureau of Alcohol, Tobacco, and Firearms, and

Michael T. Schmitz, Chief Counsel, United States Customs Service.

General Counsel Order No. 21 and subsequent revisions are hereby revoked.

Dated: June 11, 1986.

Robert M. Kimmitt,

General Counsel.

[FR Doc. 86-13593 Filed 6-16-86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 9, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB Room 7221, 1201 Constitution Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0162.
Form Number: ATF F 3067 (5210.9).
Type of Review: Revision.
Title: Inventory—Manufacturer of Tobacco Products.

OMB Number: 1512-0141.
Form Number: ATF F 2635 (5620.8).
Type of Review: Revision.
Title: Claim—Alcohol and Tobacco Taxes.

OMB Number: 1512-0171.
Form Number: ATF F 3373 (5220.3).
Type of Review: Revision.
Title: Inventory—Export Warehouse Proprietor.

Clearance Officer: Robert G. Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Stephen Bashein,

Departmental Reports, Management Office.

[FR Doc. 13592 Filed 6-16-86; 8:45 am]

BILLING CODE 4810-25-M

Performance Review Boards; Appointment of Members

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces the appointment of additional members of the U.S. Customs Service Performance Review Board's (PRB's) in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB's is to review senior executive employee's performance and make recommendations regarding performance ratings and performance awards.

DATE: The additional memberships on the Performance Review Boards are effective as of this date.

FOR FURTHER INFORMATION CONTACT: Jerry L. Padalino, Director, Office of Human Resources, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 1134, Washington, DC., (202) 377-9205.

SUPPLEMENTARY INFORMATION: There are two Performance Review Boards in the U.S. Customs Service. The additional members will serve on the Performance Review Board that reviews Senior Executives rated by the Commissioner and Deputy Commissioner. By Notice published in the **Federal Register** on May 15, 1986 [51 FR 17849], the U.S. Customs Service identified the other individuals who will serve as members. The additional members are as follows:

Raymond A. Fontaine, Comptroller, General Services Administration

Joseph H. Linnemann, Associate Comptroller, U.S. Department of State
Michael T. Schmitz, Chief Counsel, U.S. Customs Service
Stuart I. Smith, Executive Director, Public Buildings Service, General Services Administration

Dated: June 11, 1986.

Alfred R. De Angelus,

Acting Commissioner of Customs.

[FR Doc. 86-13656 Filed 6-16-86; 8:45 am]
BILLING CODE 4820-02-M

Customs Service

Importations Bearing Recorded U.S. Trademarks; Solicitation of Public Comment on Gray Market Policy Options

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Solicitation of public comment on "gray market" policy options.

SUMMARY: This document solicits public comment concerning the importation of parallel imports, or so-called gray market goods, which are products manufactured overseas bearing genuine trademarks that are purchased from foreign retailers or wholesalers and imported into the U.S. without the permission of the individual or corporation who owns the rights to the trademark in the U.S. market. Customs regulations traditionally have interpreted existing U.S. law to permit these goods to enter the U.S. when the foreign and American owners of the trademark are "related." Three U.S. Courts of Appeal have reached different conclusions concerning the validity of the regulations.

A previous solicitation for comments on the economic effects of gray market imports was published in the **Federal Register** on May 21, 1984 (49 FR 21453), and an extension of the comment period was published on July 20, 1984 (49 FR 29509).

This notice solicits information regarding two alternative approaches to the gray market that have been suggested which might address certain of the economic problems created by parallel imports. The alternatives are mandatory labeling and mandatory removal of the trademarks (i.e., demarking) of such imports. Information is sought on the economic soundness of these alternatives, including the possible ways to implement them, the problems and costs associated with their implementation, and the relative effectiveness of the approaches. We are soliciting information which will facilitate a cost-benefit analysis to determine whether mandatory demarking or labeling is in the public interest.

DATE: Comments and/or data are requested on or before August 18, 1986.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Steven Pinter, Entry, Licensing & Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

The statutory framework affecting the importation of foreign articles bearing registered trademarks, so-called "parallel imports" or "gray market goods", is contained in section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526) and section 42 of the Lanham Trademark Act (15 U.S.C. 1124). The Customs Regulations implementing these statutes are set forth in Part 133 of Title 19, Code of Federal Regulations (19 CFR Part 133). The Customs Regulations permit any person to import foreign manufactured articles bearing genuine trademarks where: (1) Both the foreign and U.S. trademark are owned by the same person or business entity; (2) the owners of the foreign and domestic trademarks are parent and subsidiary companies or are otherwise subject to common ownership or control; or (3) the articles bear a trademark applied under authorization of the U.S. trademark owner. Otherwise the regulations prohibit importations of such articles without the consent of the U.S. trademark owner and provide for the seizure and forfeiture of such articles.

The controversy over these gray market goods prompted Customs, in cooperation with other government agencies, to publish a notice soliciting economic data on the short and long term effects of such importations. A previous solicitation for comments on the economic effects of gray market imports was published in the **Federal Register** on May 21, 1984 (49 FR 21453), and an extension of the comment period was published on July 20, 1984 (49 FR 29509).

Two alternatives to the gray market situation have been suggested that might address certain of the economic problems allegedly created by parallel imports. The alternatives are mandatory labeling and mandatory removal of the trademarks (i.e., demarking) of such imports. The purpose of this notice is to solicit information on the economic soundness of these alternatives, including the possible ways to implement them, the problems and costs associated with their implementation, and the relative effectiveness of the approaches. We are soliciting information that will facilitate a benefit-cost analysis to determine whether mandatory demarking or labeling is in the public interest.

U.S. trademark law encourages investment in the manufacture and distribution of products by protecting the reputation or goodwill established by trademark owners. It also protects the public from mistake, deception, and confusion with regard to a product's source. U.S. trademark owners obtain protection against imported goods that infringe their trademarks through a Federal registration system which gives persons or corporations owning trademarks in the U.S. the right to have the Customs Service exclude at the U.S. border imports that bear marks that would copy or simulate a trademark registered with the Patent and Trademark Office in the U.S.

Sometimes separate entities own the U.S. and foreign rights to a particular trademark. Since 1922, U.S. law has prohibited the importation of products manufactured overseas bearing genuine trademarks that are registered in the U.S. unless express consent is received from the owner of the U.S. trademark at the time the product enters the U.S. The Customs Service, in its regulations, however, has traditionally interpreted the law to recognize a "related party" exception to this general statutory prohibition.

This exception permits products manufactured overseas bearing genuine trademarks to enter the U.S. without the permission of the U.S. trademark owner in cases where the foreign manufacturer is "related" to the U.S. trademark owner, e.g., is a parent, subsidiary, or licensee. (See 19 CFR 133.21.) This frequently results in importations by third parties who are typically beyond the contractual control of the foreign manufacturer and its related U.S. trademark owner. These genuine trademarked products are imported into the U.S. and are often sold to U.S. consumers at discount prices. The volume and scope of these imports have increased in recent years due, in part, to the comparatively high value of the U.S. dollar, making the Customs "related party" exception a contentious issue with U.S. trademark owners.

Section 133.21, Customs Regulations, was upheld in *Vivitar Corp.* v. *United States*, 761 F.2d 1552 (Fed. Cir. 1985), cert. denied, 106 S. Ct. 791 (1986) and in

Olympus Corp. v. *United States*, No. 85–6282 (Second Cir. June 9, 1986), but were found unlawful in *Coalition to Preserve the Integrity of American Trademarks* v. *United States*, No. 84–5890 (D.C. Cir. May 6, 1986) (COPIAT). Proceedings in the *COPIAT* and *Olympus* cases are still ongoing.

Proponents and opponents of maintaining the traditional Customs policy have each contended that their approach will best serve the interests of U.S. consumers. Proponents of maintaining the "related party" exception contend that the regulation frustrates efforts by multinational firms to price discriminate against U.S. consumers. If such firms seek to charge consumers in the U.S. a higher price than their foreign counterparts charge for the same trademarked product, the "related party" exception allows arbitrage, i.e., the resale or transfer of the product by unrelated third parties from the foreign country to the U.S., where it is sold at prices below those charged by dealers authorized by the U.S. trademark owner. In such cases, the traditional Customs policy results in greater availability of the trademarked product and lower prices to U.S. consumers. Proponents argue further that if the "related party" exception did not exist, the Federal government would become the *de facto* enforcer of multinational firms' decisions to price discriminate against U.S. consumers.

On the other hand, opponents of traditional Customs policy contend that the "related party" exception harms American consumers in two ways. First, opponents contend, it discourages U.S. trademark owners from investing in marketing or servicing of trademarked products by permitting others to "free ride" on these investments. For example, a U.S. trademark owner or a U.S. distributor of a trademarked good may be discouraged from investing in services, such as comprehensive warranty service for the product, if "free riders" can sell and distribute the same trademarked product without bearing the costs of such warranty. Second, opponents argue that the influx of gray market goods may deceive or confuse consumers about the source of trademarked products and therefore about the quality or availability of warranties on those products. Consumers may assume that all goods bearing a particular trademark are covered by uniform service warranties or are uniformly backed by the reputation of the same firm, regardless of who resells or distributes them.

Policy Options

Labeling and demarking have been proposed as policy alternatives as a means of preserving most or all of the beneficial arbitrage effect, while at the same time ameliorating undesirable free rider and consumer confusion effects that might exist. As a result, the Economic Policy Council seeks additional information on the following:

(1) *Labeling:*

Mandate Federal labeling requirements on parallel imports, either on the imported goods or at the retail place of purchase.

(2) *Demarking:*

Require the trademark on parallel imports to be "demarked," i.e., removed or obscured, prior to importation to the U.S.

Questions

The Economic Policy Council has asked that the following questions with regard to the labeling and demarking options be published for public comment.

In responding to these questions, commenters are strongly advised to provide, to the fullest extent possible, systematic, verifiable data (and sources) that give more than anecdotal support for any arguments or positions presented. Commenters are encouraged to provide data or information for as broad a range of product markets as possible.

Labeling. The following questions relate to mandatory labeling of parallel imports.

1. What is the most effective, practical approach for mandatory labeling of parallel imports?

a. What information should the label provide?

b. Should the label requirements be uniform for all parallel imports or differ depending upon the product involved?

c. Should the label be affixed to the product, container or both?

d. Who should be required to affix the label and how should it be affixed?

e. Who would perform the enforcement function? How would it be performed? Where would it be performed?

f. What remedies and/or penalties should be available for failure to label properly a parallel import?

g. Describe any other factor that should be addressed in considering regulations or legislation mandating labeling.

2. What are the costs of mandatory labeling?

a. What would be the increased cost to the government, to the importer, to the distributor, to the manufacturer, to the consumer?

b. What would be the volume of goods affected?

c. What would be the effect of the labeling requirement on the ability of parties to purchase trademarked goods abroad, import them into the U.S. and sell them at a cost lower than that of the authorized distributor? Does it vary among different goods? Are there any goods for which the effect would be to halt or significantly impair the parallel imports?

d. Are there any other costs associated with mandatory labeling?

3. What are the benefits of mandatory labeling?

a. Describe the evidence demonstrating the existence and significance of any consumer information problems that may result from the gray market. To what extent would the requirement address consumer confusion or deception problems resulting from parallel imports? Would these labels be read? To what extent would the existence of the label change consumers' purchasing decisions?

b. How easy would it be to circumvent a mandatory labeling requirement?

c. Are there any other benefits that should be considered?

4. Are there any other factors that are relevant to or affect parallel imports that have not been cited herein but that should be taken into account when formulating a policy on labeling of such goods?

Demarking

5. What is the most effective, practical approach for demarking parallel imports?

a. Should the demarking requirement be uniform for all parallel imports or differ depending upon the products involved?

b. How should products be demarked? Should demarking apply to the product, its container, or both? Must the trademark be removed or would covering it be sufficient? Must the covering be permanent?

c. Are there products that cannot be demarked at all or cannot be demarked without doing serious damage to the product? If so, how should these products be treated?

d. Who would enforce the demarking regulation? How would it be enforced? Where would it be enforced?

e. What remedies and/or penalties should be available for failure to properly demark a parallel import?

6. What are the costs of mandatory demarking?

a. What is the increased cost of demarking to the government, to the importer, to the distributor, to the manufacturer, to the consumer?

b. What would be the volume of goods affected?

c. What would be the effect of the demarking requirement on the ability of firms to purchase trademarked goods abroad, import them into the U.S. and sell them at a cost lower than that of the authorized distributor? Would it vary among different goods? Are there cases where the effect would be to halt or significantly impair parallel imports?

d. Would a demarking requirement affect the manner or extent to which owners apply trademarks to goods? Would it affect the design of products?

e. Are there any other costs associated with mandatory demarking?

7. What are the benefits of mandatory demarking?

a. Describe the evidence demonstrating the existence and significance of any consumer information problems that may result from the gray market. To what extent would mandatory demarking address the free rider or consumer confusion or deception problems resulting from parallel imports? What relevant information could retailers tell consumers (in advertisements or face-to-face) concerning a parallel import? Could the product be advertised as identical to the trademarked product? How would the ability to provide this information affect any potential benefits of demarking?

b. How easy would it be to circumvent this requirement?

c. Are there any other benefits that should be considered?

8. Are there any other factors that are relevant to or affect parallel imports that have not been cited herein but that should be taken into account when formulating a policy on demarking of such goods?

Comparison of Labeling and Demarking

9. Compare the costs, and benefits of mandatory labeling and mandatory demarking. Which of these approaches would be better?

Comments

Comments and/or data submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229

Drafting Information

The background explanation and questions contained in this document were prepared by the President's Economic Policy Council. However, personnel from the Customs Service and Treasury Department participated in its development.

William von Raab,

Commissioner of Customs.

Approved: June 13, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86-13760 Filed 6-16-86; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 116
Tuesday, June 17, 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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FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday June 23, 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. Proposals regarding the Federal Reserve System's Employee Benefits Advisory Board.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. 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: June 13, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13774 Filed 6-13-86; 3:52 pm]

BILLING CODE 6210-01-M

3

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (51 FR 20920 June 9, 1986).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, June 3, 1986.

CHANGE IN THE MEETING: Additional meeting.

The following items will be considered at a closed meeting scheduled for Friday, June 13, 1986, at 10:00 a.m.

Institution of injunctive actions.

Institution of administrative proceeding of an enforcement nature.

Litigation matter.

Settlement of administrative proceeding of an enforcement nature.

Commissioner Grundfest, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

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: Jacqueline Higgs at (202) 272-2149.

June 11, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13668 Filed 6-12-86; 4:06 pm]

BILLING CODE 8010-01-M

federal register

Tuesday
June 17, 1986

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405, 412, 416, 417, 440, 441, 456, 482, and 489

Medicare and Medicaid Programs; Conditions of Participation for Hospitals; Final Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 412, 416, 417, 440, 441, 456, 482, and 489

[BERC-519-F]

Medicare and Medicaid Programs; Conditions of Participation for Hospitals

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

ACTION: Final regulations.

SUMMARY: These regulations revise the requirements that hospitals must meet in order to participate in the Medicare and Medicaid programs (Titles XVIII and XIX of the Social Security Act).

These revisions are intended to simplify and clarify Federal requirements, to provide maximum flexibility in hospital administration while strengthening patient health and safety, to emphasize outcomes rather than processes, to promote cost effectiveness while maintaining quality care, and to achieve more effective compliance with Federal requirements.

These regulations also incorporate conforming changes relating to certification of psychiatric hospitals and participation of tuberculosis hospitals made by the Deficit Reduction Act of 1984 (Pub. L. 98-369).

EFFECTIVE DATE: These regulations are effective on September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Stanley Rosenfeld, (301) 594-5675.

SUPPLEMENTARY INFORMATION:

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I. Background

Conditions of participation (conditions) is the term used for the requirements that hospitals must meet in order to participate in the Medicare program. The current regulations containing the Medicare conditions are located in the Code of Federal Regulations at 42 CFR Part 405, Subpart J. Under the regulations at 42 CFR 440.10(a)(3) and 440.20(a)(3), hospitals are also required to meet the Medicare conditions of participation (except in the case of medical supervision of nurse-midwife services) in order to participate in the Medicaid program. These conditions implement sections 1814(a)(7), 1861 (e), (f), (g), (k), and (z), and 1903(g) of the Social Security Act (the Act) and are intended to protect patient health and safety and assure the quality of care provided to Medicare and Medicaid beneficiaries.

The conditions and accompanying standards specified in the regulations are used by our surveyors as a basis for determining (1) whether a hospital qualifies for a provider agreement under Medicare and Medicaid; and (2) whether a hospital that does not qualify or choose to participate in the Medicare program may, nevertheless, be paid for emergency services furnished to Medicare beneficiaries. In determining whether a hospital is in compliance with the conditions, HCFA must, in accordance with section 1865 of the Act, deem a hospital to meet certain conditions by virtue of its accreditation by the Joint Commission on Accreditation of Hospitals (JCAH) or the American Osteopathic Association (AOA).

There has been no substantial revision of the conditions since they were first published in 1966, despite changes in the state of the art. There have been significant changes in the organizational structure of hospitals and dramatic technological advancements since 1966. In addition, there is a need to provide for sufficient flexibility in the requirements to allow their application to both the smallest rural facility and to the most complex urban hospital centers.

II. Notices of Proposed Rulemaking (NPRMs)

A. General

On June 20, 1980, the Department published in the **Federal Register** a notice of proposed rulemaking (NPRM) to revise the hospital conditions (45 FR 41794). After that publication, HCFA initiated a process of review as part of the Secretary's efforts to reduce the burden of Federal regulations. Therefore, HCFA did not prepare a final rule for the June 20, 1980 NPRM, but rather established criteria to review the existinq conditions to determine—

1. What requirements are necessary to protect the health and safety of patients.

2. Whether the conditions contain only those requirements that are authorized by the statute.

3. What requirements unnecessarily overlap with similar requirements enforced by other Federal, State, or local government programs.

4. What requirements are consistent with our objective of permitting maximum flexibility in facility administration.

As a result of this review and our consideration of public comments on the June 20, 1980 NPRM, we published a second NPRM in the **Federal Register** on January 4, 1983 (48 FR 299). The amendments to the conditions proposed in the second NPRM took into consideration the fact that, in addition to Federal regulations, hospitals are subject to substantial State inspection through licensure programs and that there are nationally recognized standards of practice that are well

accepted and adhered to generally through a voluntary accreditation process. We maintained in the NPRM the basic function of the conditions of protecting patient health and safety. In addition, we focused on: (1) Eliminating unnecessary regulations and providing hospitals with greater flexibility; (2) replacing prescriptive administrative requirements with language that is stated in terms of expected outcome; (3) in most cases, giving responsibility to the hospital for choosing its own staff and delineating staff responsibilities rather than specifying Federal requirements for credentials and qualifications; (4) replacing specific details on maintaining adequate and safe facilities with general comprehensive statements; and (5) clarifying the regulations to avoid any implied suggestion that hospitals should organize their services into formal departments.

B. Overview of Comments

Over 36,300 public comments were received on the January 4, 1983 NPRM. Eighty-five comments were from professional medical and health care associations and groups representing institutions, practitioners, and health care personnel. The remaining comments were from State agencies, individual practitioners, social workers, medical librarians, respiratory therapy personnel, nurses, other health care personnel, and private individuals. The volume of the comments precludes detailed discussion, but we have incorporated many of the comments. Several provisions of the proposed rules, which simply restated the existing requirements, were opposed mainly because of their obsolescence. In these cases, we have revised the conditions to reflect current accepted practice. We received numerous specific comments that were intended to improve the clarity and consistency of the regulations. We have made changes to accommodate most of these comments. We also received a significant number of specific comments which we rejected because they would have hampered our general goal of providing hospitals maximum flexibility in administration while protecting patient health and safety, or because their general intent was already covered in the conditions.

III. Provisions of Final Regulations and Discussion of and Responses to Public Comments

A. Overview

These final regulations follow the basic approach of the January 1983 NPRM. This approach is designed to eliminate unnecessary provisions, delete overly prescriptive requirements, and revise requirements to reflect changes in the state of the art. We believe the revised, outcome-oriented conditions provide better guarantees of quality health care services for Medicare and Medicaid beneficiaries than the prescriptive rules that they replace. The revised regulations require hospitals to clearly demonstrate that they provide for the medical and medically-related needs of Medicare and Medicaid beneficiaries, while giving hospitals greater flexibility to achieve these goals. The new rules focus the attention of hospitals and government surveyors on the comprehensive needs of the patients, rather than outmoded and costly procedural requirements.

Because of the varied subject-matter and the number and complexity of public comments received, we will present the policy provisions of the final regulations and address public comments in the order of presentation of the conditions in the proposed regulations. Because the issue of the deletion of personnel credentials for hospital staff other than doctors of medicine or osteopathy relates to many different conditions, we will discuss it separately. The remaining provisions will be presented as follows:

For each condition, we will first summarize the existing provisions and the amendments proposed in the January 1983 NPRM. Second, we will summarize the public comments as they relate to that condition. Third, we will respond to the public comments and discuss the provisions of the final regulations, with an explanation of changes made in response to public comments or the rationale for not making further changes.

The final regulations are codified under a new Part 482 in the Code of Federal Regulations under Title 42, Chapter IV, Subchapter E (a redesignation from 42 CFR Part 405, Subpart J)

B. Personnel Credentials

• *Existing provisions.* Current regulations contain specific qualifications for hospital staff (social workers, nurses, medical records personnel, respiratory therapists and technicians, surgical technologists, radiology technicians, and medical librarians) and for directors of hospital units, departments, and services. These qualifications are heavily dependent on credentials awarded by private accreditation groups.

• *NPRM provisions.* In the January NPRM, we proposed to eliminate many of the current credential requirements. We made the proposal because those requirements (1) inappropriately restrict hospitals from selecting staff; (2) may superimpose the requirements of private groups over State laws; and (3) do not necessarily ensure the provision of quality care.

• *Public comments.* Many commenters objected to the deletion or omission of the credential requirements They argued that quality of care will deteriorate because they believe noncredentialed staff are not qualified to provide quality care. Others recommended more stringent qualifications than those under the current requirements (for example, that all social workers have master's degrees in social work and that social work assistants have bachelor's degrees).

Other commenters agreed with the deletion of the credential requirements for hospital staff other than doctors of medicine or osteopathy. They stated that it is inappropriate for the Federal Government to impose restrictions which may conflict with State and local laws; and that, irrespective of conflict with State and local laws, it is inappropriate for the Federal Government to promote the monopoly they believe has been created by private credentialing organizations. They believed that hospitals will not allow quality of care to deteriorate as a result of these deletions; that hospitals are in the best position to determine personnel criteria for their employees; and that credentials do not guarantee quality care.

• *Responses and provisions of final regulations.* We continue to believe that, in general, Federal credential requirements for hospital staff other than doctors of medicine or osteopathy inappropriately restrict hospital selection of staff (in particular in small hospitals in rural areas). We believe that hospitals are most capable of determining when specific credentials are necessary. In addition, we believe that Federal regulations should not establish requirements that are more restrictive than those set by State legislatures, unless we are convinced that Federal requirements are essential to patient health and safety and the provision of quality care. In addition, we agree that incorporating the standards of private credentialing organizations into the Federal conditions of participation can have the effect of reinforcing a tendency toward monopolistic results that cannot be justified on the grounds of protecting patient health and safety. Therefore, in the final regulations we have deleted the current credential requirements for most

hospital staff. The final regulations provide that these various types of hospital staff must have adequate education, experience, and training in accordance with acceptable standards of practice.

Although our general approach is to avoid the use of credential requirements, we have retained the credential requirements in certain highly specialized areas in which these qualifications are essential to patient health and safety and the provision of quality care. These include qualifications for directors of psychiatric services and psychiatric nursing services, and dermatologists who subspecialize in pathology and oral pathologists.

C. Provision of Emergency Services by Nonparticipating Hospitals (§ 482.2, previously § 405.1011).

• *Existing provisions.* Current regulations provide that a nonparticipating hospital that meets the requirements of section 1861(e) (1) through (5) and (e)(7) of the Act may be paid for emergency services furnished to Medicare beneficiaries.

• *NPRM provisions, public comments, and provisions of final regulations.* The NPRM made only clarifying editorial changes in this provision. We did not receive any specific public comments on the NPRM. We have adopted the NPRM provisions as final regulations.

D. Definition of Physician (§ 482.3)

• *Existing provisions.* The current regulations restate the requirement in section 1861(e)(4) of the Act that each patient be under the care of a physician, and also provide that specific services or functions must be performed by a physician. However the regulations do not contain an explicit definition of "physician." The omission of such a definition in the regulations has resulted in a common interpretation of "physician" to mean only a doctor of medicine or osteopathy. In addition, specific conditions imply that care may be provided only by doctors of medicine or osteopathy and do not recognize the present trend in hospitals of extending patient care responsibilities to other practitioners who are permitted to perform certain functions under State law.

• *NPRM provisions.* In the January 1983 NPRM, we proposed to alleviate this confusion by defining the term "physician." The proposed definition included all practitioners provided for under section 1861(r) of the Act. Section 1861(r) recognizes, for purposes of Medicare, the following practitioners who perform functions within the restrictions of State law and licenses:

(1) A doctor of medicine or osteopathy;

(2) A doctor of dental surgery or dental medicine;

(3) A doctor of podiatric medicine;

(4) A doctor of optometry, but only with respect to services related to the condition of aphakia; and

(5) A chiropractor, but only with respect to treatment by means of manual manipulation of the spine to correct a subluxation demonstrated by X-ray to exist.

We proposed this definition in order to make the use of the term "physician" in the revised regulations consistent with its use in the statute.

In the NPRM, we also proposed to use the term "medical staff" to replace "physician" in certain conditions relating to organization and operation of a hospital's professional medical staff. This would give maximum flexibility to a hospital in granting staff privileges and organizing its medical staff, and also reflects the present hospital trend of extending patient care responsibilities to various practitioners other than doctors of medicine or osteopathy. For example, a hospital could choose to grant staff privileges to nurse practitioners and nurse-midwives.

• *Public comments.* A number of commenters supported the proposal to include the categories of physicians recognized in the Social Security Act. Other commenters objected to the inclusion of podiatrists, chiropractors, and optometrists in the definition of physician. They believed that the inclusion of these practitioners would result in: (1) Deterioration of the quality of care (for example, they objected to the possibility that a chiropractor could fulfill the requirement that each patient be under the care of a physician); (2) the possibility of a participating hospital not having direction or involvement of doctors of medicine or osteopathy; and (3) a diminished role of doctors of medicine and osteopathy and a heightened role of other practitioners in hospital practices such as the granting of clinical privileges and recommendations for medical staff membership. In the opinion of these commenters, podiatrists, chiropractors, and optometrists were added to the statutory definition of physician only for coverage and reimbursement purposes. They recommended either deleting the definition or revising it to include only doctors of medicine or osteopathy, dentists, and oral surgeons.

Other commenters recommended a more inclusive definition than the one proposed—one that would prohibit discrimination against any class of practitioners. Some of the commenters recommended that the definition include psychologists, speech-language pathologists, and audiologists. They argued that these practitioners are well-trained professionals who should be granted the same status and rights as chiropractors, podiatrists, and optometrists. Others recommended including the limitations on performance of functions in accordance with State law and the restrictions on services specified in the Act.

• *Responses and provisions of final regulations.* We included a definition of the term "physician" in the proposed regulations because we wanted to eliminate the confusion that has resulted from the use of the term without a specific definition in current regulations. We selected the definition of "physician" in section 1861(r) of the Act because it is the only definition in the Medicare statute. However, it is apparent from the public comments received that adoption of the proposed definition in these final regulations could result in further confusion regarding which specific types of practitioners referred to in the section 1861(r) definition may perform certain functions and actions. Moreover, we recognize the concerns of those commenters who noted that the section 1861(r) definition was included in the statute primarily to describe the scope of services covered under Medicare, and argued that it should not be used to specify conditions of participation for hospitals.

To avoid further confusion regarding these issues, we have revised the final regulations to eliminate the definition and the use of the term "physician" and to state more specifically which categories of practitioners will be permitted to perform certain functions and actions. For example, we have specified that only a doctor of medicine or osteopathy or other licensed practitioner permitted under State law may admit patients (§ 482.12(c)). We have clarified certain provisions by specifying doctor of medicine or osteopathy where we are convinced, consistent with section 1861(e)(9) of the Act, that the requirement must be imposed to ensure patient health and safety—that is, the organization and conduct of medical staff (§ 482.22 (a) and (b)), composition of utilization review committee (§ 482.30(b)), radiologic services (§ 482.26(c)), pathology services (§ 482.27 (c) and (d)), supervision and direction of anesthesia services (§ 482.52), nuclear medicine services (§ 482.53), direction and

ordering of respiratory care services (§ 482.57), and provision of psychiatric services (§ 482.62 (b) and (c)).

The issue of recognizing doctors of medicine and osteopathy and other practitioners under applicable State law as part of the medical staff is discussed under sections III.F. and H. of this preamble.

E. Compliance With Federal, State, and Local Laws (§ 482.11, Previously § 405.1020)

• *Existing provisions.* Section 1861(e)(7) of the Act addresses State and local licensure requirements for hospitals participating in Medicare. If State or local laws provide for the licensing of hospitals, the Act requires the hospital to be licensed or to be approved by the appropriate State or local licensing authority as meeting the standards for licensure. Current regulations restate these statutory requirements and expand upon them by requiring compliance with all relevant laws (e.g., laws relating to staff licensure, fire and safety, postmortem examinations, and communicable diseases).

• *NPRM provisions.* The NPRM proposed to revise the regulations simply to restate the statutory requirements for meeting State and local licensure laws, and to require compliance with applicable Federal laws. We proposed to delete the reference to related laws.

• *Public comments.* Commenters objected to the requirement that hospitals must comply with other applicable Federal laws. They argued that this requirement exceeds the statutory authority of section 1861(e) and that it is inappropriate for HCFA to enforce Federal laws unrelated to the programs it administers. Several commenters recommended that we retain the requirement that the hospital assure that personnel are licensed or meet other applicable standards that are required by State or local laws.

• *Responses and provisions of final regulations.* In the final regulations, we have adopted the NPRM language with several changes. We have revised the provision regarding compliance with Federal laws to specify that hospitals must comply with Federal laws *related to patient health and safety.* We made this change to clarify that, while hospitals are subject to Federal laws that govern matters such as minimum wages of employees, occupational safety and health, and civil rights, only factors related to patient health and safety are within the scope of this regulation and the legislative provision on which it is based. This change will allow a hospital to be found out of compliance based on a violation of Federal law only if the violation is one that could endanger patients' health and safety.

In addition, we have restored the requirement which ensures that hospital personnel are licensed or meet other applicable standards under State and local laws (§ 482.11(c)) as a health and safety factor. In view of our decision to delete specific personnel credential requirements wherever possible and to rely instead on State and local licensing laws as a means of ensuring that hospitals employ only qualified personnel, we believe it is essential to patient health and safety to impose this requirement.

F. Governing Body

1. Standard for Medical Staff (§ 482.12(a), previously § 405.1021(e))

• *Existing provisions.* Section 1861(e)(3) requires a hospital to have bylaws in effect for its staff of physicians. Current regulations specify detailed standards for appointment of members of the medical staff by the governing body of the hospital.

• *NPRM provisions.* We proposed to revise the regulations to indicate simply that the governing body must assure that medical staff is accountable to the governing body for the quality of patient care; organizes itself under bylaws as required by section 1861 (e)(3) of the Act; and provides that a physical examination be performed and a health history obtained no more than 7 days before or 60 hours after admission. (The 60-hour timeframe in the proposed rule was a change from the current timeframe of 48 hours.)

• *Public comments, responses, and provisions of final regulations.* The NPRM provisions have been revised in the final regulations to accommodate many of comments in this area.

One commenter recommended placing the medical staff standard in the medical staff condition because its content was more appropriate to that condition. Another commenter recommended that the regulations provide that a complete health history and comprehensive physical examination be required on each patient and that the examination be performed by or under the direct supervision of a privileged member of the medical staff who is qualified by education, training, and experience to perform it. Several commenters also stated that our proposal to extend the timeframe for completion of the physical examination and health history would reduce the timeliness, and therefore the usefulness, of the information.

We have accepted the commenters recommendations by moving the provisions on physical examination and health history and accountability in the governing body condition to the medical staff condition under § 482.22 (b) and (c)(5). To assure the health and safety of patients admitted for services in certified hospitals, we have also included language that specifies that the physical examination and health history must be performed by a doctor of medicine or osteopathy, or, for patients admitted only for oromaxillofacial surgery, by an oromaxillofacial surgeon who has been granted such privileges by the medical staff in accordance with State law. We have also retained the 48-hour timeframe for completion of the physical examination and health history instead of the proposed 60 hours. This issue is discussed in detail under section III.J. of this preamble, which deals with comments on medical records. In addition, we have revised the governing body condition to specify and clarify the responsibilities of the governing body for the medical staff.

Several commenters recommended that the regulation require that the governing body provide a procedure for due process when an individual is denied either membership on the medical staff or clinical privileges. We have not accepted this recommendation because we believe that it is too prescriptive for Federal requirements and is unrelated to ensuring patient health and safety.

2. Standard for Chief Executive Officer (§ 482.12(b), previously § 405.1021 (f) and (g))

• *Existing provisions.* Current regulations specify that the governing body must appoint a hospital administrator, describe the qualifications for this position, and specify the details on how the administrator should perform his or her functions.

• *NPRM provisions.* In the NPRM, we proposed to revise the regulations by eliminating education and experience requirements applicable to an administrator. The proposed regulations would have retained the specific function by simply requiring the governing body to appoint a chief executive officer who would be responsible for managing the hospital. We proposed to delete the detailed provisions on how the administrator would carry out the responsibilities.

• *Public comments.* Commenters objected to the absence of qualification

requirements for the chief executive officer. They recommended that we provide either general or specific qualifications that must be met.

• *Response and provisions of final regulations.* The final regulations contain the language of the proposal. We have not made any changes because we believe that specifying qualifications for this staff member would reduce the governing body's flexibility in managing the facility. The governing body remains responsible for appointing the administrator. We believe the governing body's interest in assuring efficient administration of the hospital, consistent with its responsibility for the hospital's management, is a sufficient incentive for appointing qualified personnel. Furthermore, we believe that the absence of specific qualifications in the regulations will not adversely affect patient health and safety.

3. Standard for Care of Patients (§ 482.12(c), previously Physician Care, § 405.1021(h))

• *Existing provisions.* Section 1861(e)(4) of the Act requires that every patient be under the care of a physician. Current regulations require that a hospital have policies to assure that patients are under the care of a physician.

• *NPRM provisions.* We proposed to require that the governing body ensure the availability of physician care (in accordance with the proposed definition of physician specified under § 482.3), that patients actually be under a physician's care (not merely to require that the hospital have an established policy), that a physician admit all patients, and that a doctor of medicine or osteopathy be on duty or on call at all times.

• *Public comments, responses, and provisions of final regulations.* Several commenters indicated that the regulation, taken literally, would require each hospital to make available the services of all types of practitioners contained in the proposed definition of physician under § 482.3. They indicated that such a requirement would often contradict State law and would severely restrict the governing body's right to determine what categories of practitioners would be granted medical staff membership. Several commenters argued that it is contradictory to require that every patient be under the care of a physician and at the same time allow a hospital to open its medical staff to practitioners who do not meet the proposed definition of physician. Other commenters argued that, for health and safety reasons, each patient should be under the care of a doctor of medicine or osteopathy.

As discussed earlier, the public comments we received on the proposed definition of "physician" made it clear that the final regulations must specify in greater detail the functions and actions each type of practitioner is permitted to perform. We believe that this specificity is especially important in the standard on physician care implementing the statutory requirement that every patient be under the care of a physician. Therefore, we have revised the proposed standard on physician care to specify the types of practitioners included in the definition of "physician" in section 1861(r) of the Act, and to include the statutory restrictions on the practitioners' functions for which Medicare coverage is provided (e.g., for optometrists, services related to the condition of aphakia). However, our specificity in this standard on physician care is not intended to restrict the ability of doctors of medicine or osteopathy to delegate tasks to appropriate qualified health care personnel such as physician assistants, nurse practitioners, registered nurses, licensed practical nurses, etc., in accordance with State law. In addition, our use of the statutory restrictions in the context of a condition of participation that applies to all patients in a hospital does not mean that Medicare will cover or pay for hospital stays in which the patient is hospitalized solely for the purpose of receiving a type of service (e.g., the prescription of eyeglasses or contact lenses) that does not require inpatient hospitalization.

We have specified also that a doctor of medicine or osteopathy must be responsible for the care of each patient who has a medical or psychiatric problem requiring care or treatment that is not specifically within the scope of practice of other practitioners identified under section 1861(r) of the Act. We believe this approach will permit hospitals to adopt policies on medical staff membership and privileges that recognize the legitimate role of practitioners other than doctors of medicine or osteopathy in caring for patients. While still ensuring patient safety by requiring doctors of medicine or osteopathy to assume responsibility for care of patients with medical problems outside the scope of practice of other practitioners. As explained earlier, we have also deleted the proposed definition of "physician" in § 482.3.

4. Standard for Institutional Plan and Budget (§ 482.12(d), previously, Institutional Plan, § 405.1021(j))

• *Existing provisions.* Sections 1861(e)(8) and (z) of the Act require a hospital to have an annual operating budget and capital expenditure plan. Current regulations expand upon the statutory requirement by specifying detailed standards for. preparation and content of the plan and budget.

• *NPRM provisions.* We proposed to modify the regulations by simply incorporating the basic provisions contained in the Act.

• *Public comments.* Commenters recommended that we clarify the regulation to indicate that only the budget and financial documents must be prepared in accordance with generally accepted accounting principles since the principles apply only to these documents.

• *Response and provisions of final regulations.* We have adopted the proposed regulations as final with a clarifying change to indicate the application of accounting principles to the budget. We have also made a conforming amendment to this standard to reflect changes made by section 607 of the Social Security Amendments of 1983 (Pub. L. 98–21). Section 607 revised sections 1122(g) and 1861(z)(2) and added a new section 1122(j) to the Act to—

• Change the dollar unit in the definition of "capital expenditure" from $100,000 to $600,000 (or a lesser amount that may be established by the State in which the hospital is located in accordance with section 1122(g)(1) of the Act);

• Require that the plan must be submitted for review to a planning agency designated in accordance with section 1122(b) of the Act, or if an agency is not designated, to the appropriate health planning agency in the State; and

• Exempt capital expenditures from section 1122 review if 75 percent of the health care facility's patients who are expected to use the service for which the capital expenditure is made are federally qualified health maintenance organization (HMO) or competitive medical plan (CMP) enrollees and if the Department determines that the capital expenditure is for services and facilities that are needed for the HMO or CMP to operate efficiently and economically and if the services and facilities are not otherwise readily accessible to the HMO or CMP due to certain specified circumstances.

5. Standard for Contracted Services (§ 482.12(e))

• *Existing provisions.* The use of contracted services in hospitals has increased dramatically since 1965. Today, services frequently provided through contractual arrangements include nursing, pharmacy, emergency, dietary, laboratory, and radiology. Many of the conditions in the current regulations permit the use of contracted services. Although the services might be subject to survey under other conditions, such as nursing and pharmacy, it is difficult to survey for all aspects of these services when they are not provided on the hospital premises. For example, food for the hospital may be prepared elsewhere, and certain ancillary services may be provided off site. In addition, comments received on the 1980 NPRM highlighted the fact that there does not appear to be a clear understanding, or acceptance, of the hospital's responsibility for services provided under contract.

• *NPRM provisions.* The 1983 NPRM was intended to clarify that the hospital has ultimate responsibility for services, whether they are provided directly, such as by its own employees, by leasing, or through arrangement, such as formal contracts, joint ventures, informal agreements, or shared services. Because many contracted services are integral to direct patient care and are important aspects of health and safety, a hospital cannot abdicate its responsibility simply by providing that service through a contract with an outside resource. For purposes of assuring adequate care, the nature of the arrangement between the hospital and the "contractor" is irrevelant. The NPRM, therefore, proposed to specify that the governing body must be responsible for these services and that the services must be provided in a safe and effective manner.

As a result of the increased reliance on contracting for temporary nursing personnel by hospitals, the NPRM also included specific requirements to ensure that hospitals provide adequate supervision and evaluation of the clinical activities of nonemployee licensed nursing personnel (§ 482.23(b)(6)). This would ensure that contracted nursing employees are required to perform at the same level of competence as nurses employed directly by the hospital.

• *Public comments.* Commenters objected to the requirement that hospitals be responsible for services furnished in the hospital under contracts. They argued that the hospital should be responsible only for assuring that the contractor meets necessary standards and can provide reputable services.

• *Response and provisions of final regulations.* We have retained the standard for services provided under contract in the final regulations, but have revised it to indicate that the governing body is responsible for assuring that the contractor furnishes services that permit the hospital to comply with all applicable conditions of participation and standards for the contracted services. We have also revised the quality assurance condition (§ 482.21) to assure that services provided under contract that relate to patient health and safety are included for evaluation in the quality assurance plan.

6. Standard for Discharge Planning (proposed § 482.12(f), now § 482.21(b), previously § 405.1034(a)(4))

• *Existing provisions.* Under current regulations, planning for patient care after discharge is provided for under the standards for organization, direction, and personnel of the social work departments under the optional social services condition (The current regulations do not specifically refer to the term "discharge planning.")

• *NPRM provisions.* Because of the optional nature of social services in the current regulations and our belief that the organization of social work departments does not require Federal regulations, we proposed to delete this condition in our January 1983 NPRM However, we believe discharge planning is essential to total patient health and that this is a function that a hospital should provide. In addition, discharge planning has been linked to decreased rates of hospital readmissions. Therefore, in the NPRM, we proposed to add a new standard under the governing body condition that requires discharge planning. The governing body would have been responsible for assuring an ongoing effective program that provides for followup care for patients.

• *Public comments.* Most commenters favored including discharge planning requirements in the regulations. Some commenters suggested that we revise our proposed standard to require coordinated efforts of the hospital's services in planning for patient care after discharge. Other commenters suggested that we require specific types of personnel (for example, nursing or social services personnel) to be responsible for discharge planning. A commenter recommended that we consolidate numerous requirements related to patient care included in the governing body standards (e.g., physician care, discharge planning, social services) in a new patient care delivery condition because these requirements all pertain directly to patient care rather than to administration.

• *Responses and provisions of final regulations.* We agree that appropriate coordination of discharge planning among hospital services is essential and have revised the standard accordingly. However, we have not specified which hospital personnel must carry out this activity, since such specificity could unduly restrict a hospital's flexibility in meeting the discharge planning needs of its patients. We have transferred the discharge planning standard from the condition on governing body to the condition on quality assurance because we believe a hospital can achieve better compliance with the standard as a part of an effective quality of care assurance program. We have not developed a separate, comprehensive patient care delivery condition of the type recommended by one commenter. We believe that all conditions pertain to patient care delivery, and that to establish a particular condition in this manner could suggest, inappropriately, that any requirements not included in the condition are unrelated to patient care. We have, however, developed a standard that relates to the commenter's proposed patient care delivery condition under the condition relating to assuring quality of hospital care (§ 482.21). This standard deals with discharge planning (transferred from the governing body condition) and with social services. (Section III. CC. of this preamble contains a further discussion of the social services provisions.)

7. Deletion of Standards for Bylaws, Meetings, Committees, and Liaison (previously § 405.1021 (a), (b), (c) and (d))

The current regulations contain detailed standards regarding adopting bylaws, conducting meetings, appointing committees, and establishing liaison by the hospital's governing body. In the NPRM, we proposed to delete these provisions regarding bylaws, meetings, committees, and liaison because we considered them unnecessarily prescriptive. We believe that it is not necessary for Federal regulations to address these specific administrative issues. Rather, these provisions should fall under the discretion of individual facility management. No public comments were received in this specific area and the standards are deleted in the final regulations.

8. Deletion of Standard for Physical Plant (§ 405.1021(i))

The current regulations also contain under the governing body condition a requirement that the governing body be actively involved in maintaining the physical plant. In the NPRM, we proposed to delete this requirement as duplicative of the intent of the condition on physical environment. No specific comments were received on the deletion and this requirement is also deleted in the final regulation.

G. Quality Assurance (§ 482.21)

• *Existing provisions.* A number of the current regulations contain provisions that specify procedural requirements that hospitals must follow to assure quality care (fcr example, under the conditions and standards for organizational characteristics, committee functions, and personnel). We believe that a focused requirement would better address quality of care.

• *NPRM provisions.* We proposed to include a new condition of participation that would require the hospital to establish a hospital-wide quality assurance program aimed at identifying and correcting patient care problems. Specifically, we proposed to require that the hospital—

• Have a written quality assurance plan;

• Evaluate all organized services, nosocomial infections (that is, infections originating within a hospital), and medication therapy;

• Evaluate all surgery; and

• Document deficiencies and take appropriate remedial action.

• *Public comments.* One commenter recommended that we clarify what we meant by a quality assurance program "encompassing all practicing hospital staff." Similarly, other commenters indicated that it would be inappropriate for all organized services to be evaluated under a quality assurance program (for example, accounting, printing, etc.) and recommended that the program only relate to health and safety requirements.

• *Responses and provisions of final regulations.* Our intent was to establish a condition adequate to evaluate all patient care services in the hospital. Therefore, we have clarified the scope of the condition by indicating that the quality assurance program must evaluate the provision of patient care services and that the plan must apply to all organized services related specifically to patient care, including services provided under contract. We believe these changes will make it clearer that, while all patient care services furnished in the hospital (including services of doctors of medicine and osteopathy and other practitioners not employed by the hospital) must be evaluated, evaluation is not required for hospital support services, such as accounting, that do not affect patient care. We have made two other changes in the regulations to indicate that the quality assurance program must evaluate all medical and surgical services (not just surgical services) and that the hospital must not only document the appropriate remedial action but also the outcome of that action (§ 482.21 (a)(3) and (c)). As discussed under the governing body standard for discharge planning (section III.F. of this preamble) and under social services (section III. CC.), we have included a standard that provides for social work services and discharge planning as part of the quality assurance condition. The standard focuses on medically-related patient care services. It requires the hospital to have an ongoing plan, consistent with available community and hospital resources, to provide or make available social work, psychological, and educational services related to the medically related needs of patients. It also requires the hospital to have an effective, ongoing discharge planning program that facilitates the provision of followup care.

H. Medical Staff (§ 482.22, previously § 405.1023)

• *Existing provisions.* Current regulations provide specific requirements and detailed standards for bylaws, committees, meetings, and qualifications of medical staffs of hospitals.

• *NPRM provisions.* In the NPRM we proposed to delete thcse provisions that we believed were overly prescriptive or unnecessary and to modify others as follows:

1. To use the term "medical staff," not "physicians," to allow maximum flexibility to the hospital in granting privileges and organizing its professional staff. This reflects the present hospital trend of extending patient care responsibilities to practitioners other than doctors of medicine or osteopathy. (See discussion under Section III.D., Definition of Physician.)

2. To delete the standard regarding staff responsibilities to support hospital policies since this detail is not necessary for Federal regulations. However, the requirement that bylaws be enforced would have been retained.

3. To delete the standard on securing autopsies since autopsies depend on the consent of next-of-kin, except when legally mandated.

4. To delete requirements regarding consultations There is no indication that consultations, which are the direct responsibility of the attending physician, are being improperly conducted.

5. To combine and simplify requirements regarding staff appointments, staff qualifications, and staff officers (§ 405.1023 (d), (e), and (h)). The revision under the proposed regulations would have required: (a) a well-organized medical staff accountable to the governing body for the quality of medical care given to patients; (b) periodic appraisals of members of the staff; (c) the granting of clinical privileges only to those legally, professionally, and ethically qualified; and (d) an individual physician who is responsible for the organization and conduct of the medical staff. We proposed to maintain these requirements since there is evidence that a strong and responsible medical staff organization is related positively to the provision of quality care.

6. To delete the requirements regarding "other staff" (§ 405.1023(g)) since they are prescriptive without an apparent relationship to patient health and safety.

7. To simplify the requirement on bylaws. The revision under the proposed regulations would have required bylaws that enable the medical staff to carry out its responsibilities, and include a statement of qualifications for admittance to the staff and responsibilities of each category of medical staff.

8. To delete requirements on various specified committees (§ 405.1023(j)–(o)) as unnecessary and overly prescriptive. For example, the medical staff should have flexibility in determining whether a medical records committee is necessary. Also the issue of quality of care that formerly gave rise to the requirement for a tissue committee (§ 405.1023(o)) is now dealt with under another condition, quality assurance (§ 482.21).

9. To delete the requirement concerning meetings (§ 405.1023(p)). These meetings, such as those focusing on review of clinical work, were intended to assure quality of care. That intent would be provided for under the quality assurance condition.

10. To delete the requirements on organization, staffing, and responsibilities of medical staff departments and chiefs of services (§ 405.1023 (g) and (r)) as unnecessary and not affecting patient health and safety.

• *Public comments, responses, and provisions of final regulations.*

Comment: Some commenters recommended that the regulation be revised to prohibit the hospital or its medical staff from discriminating against any category of physician identified in the proposed § 482.3 by refusing to allow admittance to the staff or duties and privileges based on the category of a physician rather than individual capabilities.

Response: We have not accepted this recommendation because we wish to grant hospitals the flexibility to allow or to refuse to allow, practitioners other than doctors of medicine or osteopathy to join the medical staff and to obtain privileges if the hospital so chooses. To do otherwise could not give adequate deference to State laws that regulate hospitals or to changing practices in the delivery of medical care.

Comment: Commenters objected to the opening of the medical staff to practitioners other than doctors of medicine or osteopathy that they believed was implicit in the proposed rule's absence of a discussion of the composition of the medical staff. They argued that the medical staff functions of setting policies and procedures governing the hospital's provision of care, and the review and granting of clinical privileges, demanded the skills and training possessed only by doctors of medicine or osteopathy. Consequently, they believed that creating the potential for membership by other individuals would also create the potential for doctors of medicine or osteopathy to have a diminished impact on medical staff functions, resulting in loss of quality of patient care.

Response: We have revised the condition addressing the governing body responsibility for the medical staff (§ 482.12(a)) and the condition on the medical staff (§ 482.22) to clarify the governing body's responsibility to determine the composition of the medical staff and to approve the medical staff bylaws. As discussed earlier under section III. D., we have also revised portions of other conditions to require that only a doctor of medicine or osteopathy be permitted to perform certain functions and services where we believe the functions or services of a doctor of medicine or osteopathy are essential to patient health and safety.

As previously noted in response to a comment, we wish to grant hospitals the flexibility to allow, or to refuse, to allow, practitioners other than doctors of medicine or osteopathy to join the medical staff and to obtain privileges if the hospital so chooses. To do otherwise would not give adequate deference to State laws that regulate hospitals or to changing practices in the delivery of medical care.

Comment: Commenters objected to the requirement that a "physician" (as defined in the regulations) be responsible for the organization and conduct of the medical staff. They recommended that we specify that direction be provided either by a doctor of medicine or osteopathy or by a committee of physicians as defined in the NPRM, a majority of which would be required to be doctors of medicine or osteopathy.

Response: We have revised the regulation to require that an individual doctor of medicine or osteopathy be responsible for the conduct and organization of the medical staff. We believe that this change assures a necessary level of skills and education for the direction of the medical staff. We have not adopted the suggestion that we permit this responsibility to be assigned to a committee. We are concerned that division of responsibility for maintenance of quality of care standards among members of a committee could lead to inconsistent application of those standards, and that these inconsistencies, which could jeopardize patient health and safety, would be difficult to detect and correct if accountability is dispersed among the members of a committee. To ensure proper accountability for medical staff conduct and organization, we believe a single individual must have this responsibility.

We have also revised the regulation to indicate that, if a hospital chooses to have a medical staff executive committee, a majority of the committee members must be doctors of medicine or osteopathy. If the chairperson is a doctor of medicine or osteopathy, he or she could be designated as the individual responsible for the conduct and organization of the medical staff. If a hospital chooses to have a medical staff executive committee that acts for the staff under the same circumstances, we believe that it is necessary to patient health and safety that a majority of its members be doctors of medicine or osteopathy. We also believe that even if a hospital has a medical staff executive committee, it is necessary that an individual doctor of medicine or osteopathy be designated as the director to assure consistent application of standards essential to quality of care.

Comment: Commenters recommended that we continue the requirement for a joint committee to formalize liaison between the medical staff and the hospital's administration. The commenters argued that this committee is necessary to coordinate activities related to patient care and that without such a requirement coordination would falter.

Response: We have not accepted this recommendation because we believe that the requirement that the medical staff be accountable to the governing body for the quality of care makes the governing body responsible for assuring coordination of patient care services. We believe that how best to organize liaison and coordination of activities with the medical staff should be the internal decision of the hospital's management.

Comment: Commenters recommended that the regulations be revised to require the medical staff bylaws to contain a description of the organization of the medical staff, a list of recognized categories of medical staff, and enough latitude for nonphysician practitioners to perform physical examinations and health histories, if this practice is consistent with State laws and the wishes of the medical staff.

Response: We have revised the regulations to incorporate the first two recommendations because we feel the details of the recommendations are necessary to ensure that the medical staff functions in a manner that promotes patient health and safety. We have not accepted the third recommendation, but have instead specified that the physical examination and medical history must be performed by a doctor of medicine or osteopathy, or, for patients admitted only for oromaxillofacial surgery, by an oromaxillofacial surgeon who has been granted such privileges by the medical staff in accordance with State law. We believe this provision is necessary to ensure that patients receive appropriate treatment for medical or psychiatric problems that may be present on admission, or are likely to arise during hospitalization.

Comment: In commenting on the proposed condition on medical staff, commenters recommended that if the medical staff is opened to individuals other than doctors of medicine or osteopathy, we should call the staff the "professional staff" or "organized staff" rather than "medical staff." They believed that the term "medical staff" connotes a staff of doctors of medicine or osteopathy, and that opening these staffs to other practitioners demands a change in the name of the staff to reflect accurately its composition.

Response: We have not accepted this recommendation because the term "medical staff" connotes a set of functions and responsibilities which this

regulation is not intended to change. The term is appropriately used to refer to the staff responsible for the medical care of patients, irrespective of the composition of that staff specified by the governing body.

Comment: Commenters were against deleting the requirement on autopsies. They cited autopsies as a significant tool for advancing medical knowledge.

Response: We agree with the commenters' statement on the value of autopsies and are convinced that autopsies are an essential educational tool which contributes to the quality of care furnished by a hospital. Therefore, we have revised the regulations to require that the medical staff should attempt to secure autopsies in all cases of unusual deaths and of medical-legal and educational interest.

I. Nursing Services (§ 482.23, previously § 405.1024)

• *Existing provisions.* Section 1861(e)(5) of the Social Security Act requires that a hospital provide 24-hour nursing services. We believe that several of the standards for the condition that implement this statutory requirement are overly prescriptive, inflexible, and, in some areas, overlapping.

• *NPRM provisions.* In the NPRM, we proposed to replace the condition statement with the statutory language that requires 24-hour nursing care be furnished or supervised by a registered nurse, except for rural hospitals of 50 or fewer beds. We proposed to retain requirements on organization, staffing, administration of drugs, and delivery of care and to delete the standards on working relationships and staff meetings because we believed these issues are best addressed by the individual hospitals.

• *Public comments, responses, and provisions of final regulations.*

Comment: Commenters objected to the limited list of individuals permitted to administer drugs. They specifically objected to the omission of doctors of medicine or osteopathy as well as respiratory care personnel and specialized technicians (for example, radiologic technicians, cardiac catheterization technicians, etc.), citing their specialized training and unique skills as necessary to assure quality care. Other commenters objected to the imposition of Federal regulations over State laws. Some commenters objected to registered nurses being assigned responsibility for supervision of the administration of drugs by the individuals listed in the NPRM. They noted that some of these individuals are not licensed by States (for example, student nurses, medication technicians, etc.) and that registered nurses should not be responsible for their actions. Many commenters recommended that we adopt language that would allow administration of drugs by staff who are permitted to do so by State law and the rules and regulations of the medical staff.

Response: We recognize that certain professionals that were not listed in the NPRM have a legitimate role in administering drugs and are permitted to do so by State law and medical staff rules and regulations. We have deleted the specific listing and added a provision that requires preparation and administration of drugs and biologicals in accordance with Federal and State laws, the orders of the practitioner or practitioners responsible for the patient's care, and accepted standards of practice. We have also specified that all drugs and biologicals must be administered by, or under the supervision of, nursing or other personnel in accordance with Federal and State laws, including applicable licensing requirements, and approved medical staff policies and procedures.

Comment: Commenters objected to restricting the acceptance of oral orders to registered nurses and licensed practical nurses. They noted that this restriction had the potential for creating health and safety hazards. Commenters argued that in order to assure accurate treatment, orders for highly specialized drugs and services should be taken by the specialized staff who would carry out the orders. They further noted that this requirement could cause a significant waste of nursing time better spent on patient care.

Response: We agree with these comments and have revised the regulations (§ 482.23(c)(2)(i)) to allow acceptance of oral orders by staff designated by medical staff policies and procedures, consistent with State and Federal laws. We believe this revision will assure patient health and safety, will maximize hospital flexibility in use of staff, and will enhance efficiency.

Comment: Some commenters noted that the language of the regulations conflicts with the statutory requirement on whether both a registered nurse and a licensed practical nurse must be available at all times for nursing services. Another commenter recommended that the regulation specify a ratio of nurses to patients which must be met for compliance with the standard to assure adequate staffing.

Response: We have revised the regulation to include the specific statutory language related to availability of nursing services as the statement of the condition. We have not included a specific ratio of nurses to patients because the need for nursing care varies from hospital to hospital and depends on services required. Any ratio established would be inadequate in some settings and unnecessarily prescriptive in others.

Comment: Commenters requested that the requirement that a registered nurse assign care to other nursing personnel be revised to allow the registered nurse to provide care as well as to supervise patient care.

Response: We do not believe it is necessary to make the recommended change. The language of this standard does not preclude the registered nurse from both assigning nursing care and providing care directly.

Comment: Commenters wanted the regulations to be revised to require the director of nursing to provide continuing training and orientation for the staff and to specify that the director of nursing is not required to supervise nonemployee nurses who do not perform services within the scope of responsibility assigned to the nursing service (for example, certified registered nurse anesthetists, nurse midwives, etc.).

Response: We have not accepted the recommendation to require the director of nursing to provide training and orientation because we believe that the need for training activities will be fulfilled through the quality assurance program. If a hospital and the governing body wish to carry out these activities through the director of nursing or other nursing staff personnel, they are free to do so.

We have revised the regulations to clarify that the director of nursing is responsible for supervision of only those clinical activities of nonemployee nursing personnel that occur within the responsibility of the nursing services.

Comment: Commenters objected to limiting the provision of blood transfusions to registered nurses with special training. They noted that this provision would prohibit physicians from performing transfusions as well as negate the effect of State laws which determine who may administer a transfusion. Many commenters recommended that we retain the applicable language in the current regulation.

Response: We have accommodated this recommendation by requiring that blood transfusions and intravenous medications be administered in accordance with Federal and State laws and approved medical staff policies and procedures. If they are administered by personnel other than doctors of

medicine or osteopathy, the personnel must have special training for this duty.

J. Medical Record Services (§ 482.24, previously § 405.1026)

• *Existing provisions.* Section 1861(e)(2) of the Act requires that a hospital maintain clinical records on all patients. The current regulations implementing this requirement specify a condition consisting of 10 standards and 32 factors, many of which overlap are inflexible, and are overly prescriptive. In addition, parts of these regulations have been made obsolete by changes in technology.

• *NPRM provisions.* In the NPRM, we recommended the following changes, the majority of which are intended to focus on outcome-related requirements, rather than process-oriented requirements:

1. *Preservation.* We proposed to remove the reference to statute of limitations and require retention of medical records for 5 years. (The final regulations clarify this retention period by specifying that records be preserved for *at least* 5 years to allow hospitals to retain records for a longer period, if they choose.)

2. *Personnel.* We proposed to delete all specific credential requirements for medical records personnel. We noted in the preamble that we have seen no evidence that specific credential requirements are indispensable in assuring the quality of the medical records.

3. *System details.* We proposed to modify these requirements to retain the requirements that the hospital maintain a system ensuring prompt location of a patient record by diagnosis and procedure, that the contents of the medical record contain sufficient information, and that the appropriate person sign the medical record. Other details would have been deleted.

• *Public comments, responses, and provisions of final regulations.*

Comment: Commenters recommended that we require "timely" rather than "immediate" retrieval of records by diagnosis or procedure or both. They noted that only sophisticated computerized records systems would allow immediate retrieval.

Response: We have revised the regulations to incorporate this recommendation because we believe that timely retrieval of records will be sufficient for meeting quality assurance and utilization review program requirements that this provision was intended to support.

Comment: A commenter recommended that we require a plan of treatment for each hospital patient rather than requiring one only for patients in psychiatric hospitals.

Response: We have not accepted this recommendation because in many cases creation of such a plan for patients other than psychiatric patients would be impossible until well into the stay when a diagnosis is established.

Comment: Several commenters recommended that we require a statement of the "outcome of hospitalization" in the medical record in lieu of a prognosis. They noted that often a prognosis is not available at discharge because it may depend on further treatment, the patient may be referred to a tertiary care facility, the disease may not be predictable, or the physician may not want to disclose the prognosis to the patient.

Response: We believe this recommendation is valid and have incorporated it in the regulations. We believe that a statement of the outcome of hospitalization would be as useful as, or in some cases more useful than, a prognosis.

Comment: One commenter recommended that we delete requirements for medical record documentation of nosocomial infections and adverse drug and anesthesia reactions and add a more general requirement for documentation of complications that occur during hospitalization.

Response: We have not made this change because we believe records that document nosocomial infections and drug and anesthesia reactions are essential to quality assurance and infection control programs, and thus have a direct bearing on the health and safety of patients.

Comment: A commenter recommended that we require that the record contain properly executed consent forms for those procedures and treatments determined by the medical staff to require written patient consent.

Response: We accepted this recommendation because we believe that, in general, it is appropriate for the medical staff to determine when written consent is necessary and have revised the regulations accordingly. We have also revised the provision to take into account the possibility that some State laws may require written consent under certain circumstances or for certain procedures.

Comment: A commenter recommended that we require interpretations of X-rays to be inserted in the medical record.

Response: We believe that § 482.24(c)(2)(iii), which requires inclusion of "appropriate findings by clinical and other staff involved in the care of the patient," subsumes the requirement recommended by this commenter.

Comment: Several commenters recommended that the regulation be revised to clarify that information from the records, not the records themselves, would be released to authorized individuals. They noted that actual records are generally released only in accordance with court orders, a subpoena, or a statutory requirement.

Response: We have revised the regulation to clarify the requirement for the release of information from the record or a copy of the record and to include a provision that original records are to be released by the hospital only in accordance with Federal or State laws, court orders, or subpoenas. It is essential to patient health and safety that original records be maintained in the hospital to facilitate treatment if the patient is readmitted. Duplication of the record carries a risk of omission or inadvertent alteration of information which could result in improper treatment.

Comment: One commenter objected to the requirement that records be maintained in original or legally reproducible form if the record is a radiologic image. The commenter argued that such images should be kept in their original state.

Response: We believe that the provisions of § 482.26(d) governing radiological services, which require the maintenance of image records for at least 5 years, ameliorates this concern.

Comment: Many commenters objected to our proposal to extend the maximum timeframe within which the medical history and physical examination information must be completed and typed in the chart from 48 to 60 hours after admission. They argued that extension to 60 hours could add a potential health and safety risk if physicians are allowed to delay the history and physical beyond 48 hours postadmission.

Response: We accept the commenters arguments that the health and safety issue is whether the physical and history are completed in a timely fashion, not whether clerical functions are completed. We also agree that any extension of the timeframe could add an element of risk to patient health and safety. We have, therefore, retained the current maximum timeframe of 48 hours in the final regulations, rather than the proposed maximum timeframe of 60 hours.

Comment: Commenters objected to proposed extension of the timeframe for completion of the record from 15 days

post-discharge to 30 days post-discharge. They argued that timely completion of the discharge summary is essential to post-discharge care and to timely billing.

Response: We have retained the proposed 30-day requirement because none of the commenters provided compelling reasons for a shorter timeframe. We believe that post-discharge care usually begins before conclusion of the current 15-day timeframe. Moreover, providers of post-discharge care can acquire necessary information from practitioners or other sources, regardless of the timely completion of the record. Since it is in the hospital's interest to bill promptly, we do not believe use of a longer timeframe will necessarily result in widespread delays in completing discharge summaries.

Other comments: Many commenters objected to the deletion of the requirement for credentialed medical records personnel. This is an issue that has been addressed as it relates to credentials of all hospital personnel other than physicians as defined in the NPRM. That discussion appears earlier under Section III.B. Personnel Credentials.

K. Pharmaceutical Services (§ 482.25, previously § 405.1027)

• *Existing provisions.* Current regulations mandate that pharmaceutical services be administered in accordance with accepted professional principles and recognized standards of practice to assure safe, accurate pharmaceutical regimes for patients. As currently written, this condition limits the hospital's ability to establish its own system for the control and administration of drugs.

• *NPRM provisions.* In the NPRM, we proposed to eliminate many of the specific and prescriptive details. We also proposed to modify the personnel standard to specify that if the hospital does not have a staff pharmacist, a designated individual must have responsibility for the day to-day operations of the pharmacy services. In addition, we proposed to specify that, when a pharmacist is not available, drugs may be removed only by personnel designated by the medical staff or pharmacy.

• *Public comments, responses, and provisions of final regulations.*

Comment: Commenters suggested that we clarify lines of responsibility for policies regarding removal of drugs from the storage area or pharmacy by specific adherence to policies of *both* the medical staff and the pharmacist. Other commenters recommended that, in specifying what personnel may remove drugs from the pharmacy or drug storage area in the absence of the pharmacist, four changes should be made: that we clarify that the requirement applies *at any time* the pharmacist is not available; that we delete "drug storage area" or not require that the drug storage area be locked; that we specify that the designated personnel must be licensed; and that we require that policies for removing drugs be approved by the pharmacy *and* the medical staff.

Response: We believe most of these suggestions would clarify the intent of the provision and the lines of authority for these services within the institution. We have made all changes except the following: We have not deleted "drug storage area" since we believe this should remain an option for smaller hospitals. In addition, we believe the control of substances requires a locked area, particularly where there is no pharmacist on duty full time. In lieu of requiring that personnel designated to remove drugs and biologicals be "licensed", we have required that they be designated in the policies of the medical staff and pharmaceutical service in accordance with Federal and State law.

Comment: Commenters suggested that we substitute the term "pharmaceutical service" for "pharmacist" to emphasize that the services performed are an integral part of the organized delivery of health care. Other commenters suggested changing the statement of the condition to clarify that the pharmaceutical service is responsible for quality, effective drug therapy.

Response: We have incorporated the first change where possible. We have not made the change if doing so would blur the lines of responsibility for functions that can only be performed by the pharmacist. We believe that the determination of the quality of drug therapy is very subjective.

Comment: Commenters requested that we modify the statement of the standard on delivery of services (§ 482.25(b)) to indicate that "applicable" standards of practice which are consistent with State law will be applied in distributing and administering drugs.

Response: We have accepted the comment as our intent is to require standards that are consistent with State and Federal laws.

Comment: Commenters suggested that the standards be further revised to reflect changes in pharmaceutical services over the past decade. They stated that "administration" of drugs is generally recognized as a nursing service and suggested that we use the concept of "control of drugs" as a function of the pharmaceutical service. Some commenters recommended that we specify permitted use of a unit dose system. Other commenters stated that we should include "biologicals" along with "drugs" in any provisions relating to pharmaceutical services since the term clarifies the substances to which the requirements apply.

Response: We have accepted these suggestions since they are reasonable, accurate reflections of present practice. However, we have not referred specifically to a unit dose system because we believe that the current language of the regulations does not preclude use of such a system.

Comment: Some commenters believed the requirements for protecting patients from toxic or dangerous medications to be contrary to our stated goal of stressing outcome rather than process. Other commenters want the prescribing practitioner, rather than the medical staff, to approve the automatic stoppage of dosages of dangerous drugs.

Response: The final regulations require a procedure for stopping open-ended drug orders, subject to approval by the medical staff. We have not restricted this requirement to toxic or dangerous drugs, since extended use of any drug product carries with it a potential risk to patient safety. We also do not believe these procedures should be left to the prescribing practitioner. We believe that consistent practices are necessary within the hospital, and such consistency would not be possible if individual practitioners were making ad hoc decisions.

Comment: Commenters suggested that the requirements regarding dispensing of drugs (§ 482.25(b)(1)) as well as the reporting of abuses or losses of controlled substances (§ 482.25(b)(7)) be amended to show that they are done in accordance with State and Federal laws.

Response: We have incorporated the suggested language, although a facility is required to meet all applicable State and Federal laws by virtue of other provisions. However, we believe repeating the requirement here would be useful.

Comment: Commenters suggested that we expand the list of information in § 482.25(b)(8) that must be made available for use by the professional staff to include information on drug therapy, potential side effects, toxicology, and other drug information and to define the professional staff to whom a formulary and information regarding drug interactions must be made available. Commenters also suggested that we replace the

requirement for a formulary with a requirement for a formulary system.

Response: We have accepted the suggestions for expanded professional information because we believe they provide the potential for improving the outcome of pharmaceutical services. We have also accepted the suggestion for a formulary system because we believe this is an effective way to assure quality pharmaceuticals at reasonable costs. We have not specified the professional staff to whom the information must be available because we believe the hospital would want to identify those individuals on the basis of the organization of the provision of these services.

Comment: Commenters stated that we have emphasized drug storage area and suggested that we delete the concept and stress that there must be an organized pharmaceutical service under the direction of a qualified registered pharmacist. Other commenters recommended that we define what constitutes a pharmacist's supervision if the hospital's pharmaceutical services consist of a drug storage area. Some commenters suggested that the regulations require that a pharmacist be on call or that a consultant pharmacist be available during times when the pharmacist is not there.

Response: We have made changes to stress the need for pharmaceutical services. The regulations already specifically require that a registered pharmacist direct the services and be responsible for developing, supervising, and coordinating all activities in pharmacy services. Our intent is that the pharmaceutical services meet the needs of patients, including the need for emergency services at times when the pharmacist is not there. We do not believe that prescriptive Federal regulations should be imposed on hospitals that could meet this requirement in other ways, consistent with Federal and State laws and the needs of patients. We have not deleted the language relating to drug storage areas because there are small institutions where this is the only way in which these services can be furnished. By stressing the soundness of policies and procedures in effect in the absence of the pharmacist responsible for the service, we believe we have adequately responded to the concerns of these commenters.

L. Radiologic Services (§ 482.26, Previously § 405.1029)

• *Existing provisions.* Current regulations provide that basic radiologic services must be available to patients and that these services must be provided in accordance with professionally approved standards for safety and personnel qualifications.

• *NPRM provisions.* We proposed to revise the condition statement to define more specifically what constitutes radiological services. We proposed to retain the basic factors relating to safety hazards and to revise the personnel standard to require that only a qualified radiologist, either full or part time, supervise the services and interpret films that require specialized knowledge. The current language in the regulations had been interpreted by some to mean that a radiologist must interpret or reinterpret every film. The proposed language would also make it clear that the radiologist needs to sign reports only of his or her interpretations.

We proposed to allow the medical staff and the individual responsible for radiological services to designate who is qualified to use radiological apparatus. We also proposed to modify the standard on signed reports to require that records of departmental activities be maintained and that radiological reports and films be preserved for 5 years. (As explained earlier, the final regulations require that records be preserved for at least 5 years.) Specific references to fluoroscopy and radium were to be deleted since the term radiology includes these items.

• *Public comments, responses, and provisions of final regulations.*

Comment: A number of commenters believed that the restriction of radiologic services to orders by practitioners with clinical privileges would prohibit a hospital from providing a community-wide service. They suggested that we allow fuller use of the service. Similarly, commenters believed the medical staff should be free to designate, by resolution, the acceptance of referrals of patients of practitioners not on the medical staff for diagnostic procedures.

Some commenters stated that the provision of radiologic services should be on the order of a doctor of medicine or osteopathy or other practitioner authorized under State law. Others believed the ordering practitioners should be identified as "fully licensed physicians or limited licensed practitioners" as stipulated in the determination of privileges under medical staff bylaws. Other commenters suggested that, if the ordering of radiologic services is granted to individuals outside the institution's medical staff or to practitioners with limited licenses, language be added to assure that the hospital is free to maintain standards of responsibility.

Response: We have revised the regulations to permit the medical staff and governing body to extend the use of the services, consistent with State law, to others outside the hospital. This will permit maximum flexibility of the hospital in responding to the needs of its service area. Nothing in the condition precludes the hospital from establishing standards of responsibility for the referring practitioners.

We believe the provision of the condition is sufficiently broad to encompass all potential disciplines that may be permitted to order radiologic services. We specify in the regulations that the services must be authorized only by practitioners with clinical privileges or, consistent with State law, by other practitioners authorized by the medical staff and the governing body to order the services. In many areas of the country, doctors of medicine or osteopathy other than radiologists may be interpreting certain categories of imaging procedures. It is not the intent of these regulations to change or dictate medical practices; instead, we want to structure our rules in a way that permits individual medical staffs to structure their procedures to address patient needs and local medical patterns of practice.

Comment: Commenters stated that the restriction of the application of the condition to ionizing radiology procedures is not appropriate since ultrasound procedures are also mentioned. They suggested that the appropriate location of the reference to these ionizing procedures is in the standard relating to safety for patients and personnel, and that the application of the entire condition be limited instead to diagnostic radiology procedures.

Response: We agree that the statement limiting application of the condition to ionizing procedures is not appropriate since new techniques are available for imaging. We have moved the statement to the standard relating to patient and personnel safety as suggested. We have not limited the application of the regulations to diagnostic radiation services because the regulations apply also to any therapeutic radiation services that are furnished.

Comment: Commenters questioned the NPRM specification of the individual who may designate which personnel may use radiologic equipment and administer procedures. They suggested that we not limit use to personnel designated as qualified by the individual responsible for the service or by the medical staff but extend use to personnel designated as qualified by the radiologist responsible for the service and fully licensed doctors of medicine or

osteopathy or limited licensed practitioners under privileges granted by the medical staff with the concurrence of the radiologist. Other commenters suggested that the attending practitioner rather than the medical staff should designate personnel.

Response: We have modified the language of this provision to clarify that the medical staff is the entity to designate who may use radiologic equipment and administer procedures. We believe that the medical staff's responsibility for the quality of patient care requires that the medical staff determine who may use radiologic equipment and administer procedures because of the risks to patient health and safety inherent in these services.

We do not believe that we can assume that the practitioner responsible for the patient's care would be familiar enough with equipment and procedures to designate who may use radiologic equipment and administer procedures.

Comment: Some commenters recommended that the regulations be modified to require that a radiologist must interpret all imaging procedures rather than only those procedures that require specialized knowledge. Other commenters suggested that we expand the requirement that a radiologist sign reports of interpretations to require other practitioners also to sign them. They argued that this expansion will afford protection to the patient and perhaps be a deterrent to clinicians to undertake imaging procedures.

Response: We believe requiring the radiologist to interpret all imaging procedures would create hardships for many hospitals that must rely on part-time or consultant radiologists. We also believe that the determination of those procedures that must be interpreted by a radiologist should be stipulated by the medical staff of individual hospitals. If a hospital wishes to have every procedure interpreted by a radiologist, there is no preclusion to that approach. Since the regulations are intended to permit hospitals to exercise flexibility in who may interpret radiologic services, we have made the recommended change that individuals designated by the medical staff must sign their own reports as well as that the radiologist is responsible for signing only his or her own reports. We believe the recommended approach is equitable and legally supportable.

Comment: Commenters believed we have created confusion by referencing a radiologist supervising the service in some places and an individual responsible for the service in others. They further commented that radiologists should be defined by credentials and that consistent and accurate terminology should be applied to doctors of medicine or osteopathy other than radiologists who may be permitted by the medical staff to perform and interpret some radiologic procedures. Some commenters suggested that we recognize that some hospitals use consulting radiologists in lieu of full-time or part-time radiologists.

Response: We have revised the regulations to clarify terminology relating to individuals responsible for various functions within the radiologic service to eliminate misunderstanding and to recognize use of consulting radiologists in some hospitals. We have not accepted the suggestion that radiologists be defined by specific credentials because we do not believe that the absence of credentials will imperil patient health or safety. However, we have provided that, for purposes of the regulations, a radiologist is a doctor of medicine or osteopathy who is qualified by education and experience in radiology. We believe this is sufficient specificity to protect patient health and safety.

Comment: One commenter recommended that the professionally approved standards for safety and personnel qualifications required in the statement of the condition be identified as those reported by the National Council for Radiation Protection and Measurements.

Response: We do not believe this level of detail is appropriate for Federal regulations. Therefore, we have not revised the proposed language.

Comment: Commenters suggested that the description of records to be retained be expanded to include films, scans, and other images. Other commenters suggested that the requirements for maintenance of radiologic records be cross-referenced to the requirements for medical records. They suggested deleting the details of the types of records to be maintained.

Response: We have expanded the description of the radiologic records to be retained as suggested to reflect a more complete listing. We have maintained the record retention requirement in the condition even though it is similar to the requirement on medical records. Since different employees manage the storage of radiologic records, and because, in some cases, different surveyors may evaluate compliance of the radiologic service as opposed to medical records, we believe it would be helpful to have the records retention rules stipulated in each respective area.

M. Laboratory Services (§ 482.27, previously § 405.1028)

• *Existing provisions.* Current regulations specify requirements to ensure the health and safety of patients who are furnished laboratory services in hospitals. Under current rules, if a hospital has a contractual agreement with an outside laboratory for laboratory services, the outside laboratory must be a Medicare-approved hospital or independent laboratory.

• *NPRM provisions.* The main thrust of the proposed revisions to this condition was to consolidate similar factors, clarify the intent, and establish uniformity in clinical laboratory requirements. The standards affected by the consolidation are: adequacy of laboratory services, clinical laboratory examinations, availability of facilities and services, laboratory report, tissue examination, and reports of tissue examinations. The revision also proposed to consolidate all personnel requirements in a single standard in order to eliminate the ambiguity in qualifications and clarify the responsibilities of the laboratory director. Of particular note is the distinction between those laboratory services that can be directed by a laboratory specialist qualified by a doctoral degree and those laboratory services that, by their nature, must be under the direction of an individual doctor of medicine or osteopathy.

Additionally, we proposed to eliminate the preference for the American Society of Clinical Pathologists registry in order to permit fair competition for technologist positions by otherwise qualified nonregistered professionals.

We proposed to delete the requirement for routine urinalysis and hemoglobin or hematocrit on admission of each patient. HCFA has reguested Medicare contractors to stop automatic payments for a variety of clinical tests which have sometimes been routinely performed on all Medicare admissions. This deletion would ensure that the regulations are consistent with this policy. The NPRM also proposed to delete the requirements on participation in staff, departmental, and clinicopathic conferences as unnecessarily prescriptive. We believe these conferences should be subject to administrative discretion based on the needs of the individual facility.

As noted in the proposal, HCFA is coordinating with FDA and the Center for Disease Control (CDC) of the Public Health Service future revisions of the

regulations concerning blood banking personnel, proficiency testing, and quality control.

• *Public comments, responses, and provisions of final regulations.*

Comment: A number of commenters suggested that a hospital's laboratory director be a doctor of medicine or osteopathy who is qualified by education and training, or a pathologist. They argued that the medical nature of the decisions made in laboratories requires participation of a practitioner with these credentials if the quality of services is to be assured. Others contended that removal of the requirement that a pathologist be available on a consultant basis would allow small, rural hospitals to dispense with a vital component of patient care—adequate laboratory services.

A number of other commenters favored laboratory direction by personnel with doctoral degrees in areas other than the physical, chemical, and biological sciences as well as other scientists or practitioners (other than doctors of medicine or osteopathy) with clinical training and experience. One commenter suggested that technical supervision and the ability to interpret tests requiring specialized knowledge, rather than specific credentials, be requirements for the laboratory director. Another suggested removal of the requirement for training and experience in the areas of services offered because it would place limitations on hospitals inadvertently.

Response: In the proposed rule, we made a distinction between certain laboratory services that, by their nature, must be under the supervision of a doctor of medicine or osteopathy and those that could be directed by a laboratory specialist with a doctoral degree. For example, anatomical pathology services must be supervised by a pathologist and transfusion services must be performed under the supervision of a pathologist or other doctor of medicine or osteopathy with training and experience in transfusion therapy (proposed § 482.27(c)(1) (ii) and (iii)). We have revised the requirements for training and experience to be consistent with existing widespread practice as well as our independent laboratory requirements, including those for technical supervision of transfusion services. We have not adopted the comment suggesting that we include a general provision that would allow nondoctoral scientists to serve as directors at this time. However, the Department has currently underway a thorough review of all clinical laboratory regulations. During the next year, the Department will be proposing regulatory and other reforms intended to reduce regulatory burden, remove inconsistencies and eliminate unnecessary credentialling requirements while continuing to ensure patient health and safety.

Comment: One commenter noted that the proposed wording of the provision that a board-certified oral pathologist *must* sign oral pathology tissue examination reports prevents pathologists who are not board-certified from signing the reports. Another organization requested inclusion of its name among the boards recognized for certification of dermatology and oral pathology. Another stated that private certification should not be the basis for qualifying signatures on tissue reports.

Response: The use of *must* in the provision on oral pathology tissue reports was a typographical error. We have corrected it by substituting "may." Although our general goal is to remove credential requirements for categories of hospital personnel in order to provide hospitals maximum flexibility, we have not removed credentials for pathologists of dermatology or oral pathology who may sign tissue examination reports. We have retained the requirements for board certification in these two limited areas that were published in the NPRM and have added other boards in an effort to assure that, if the reports of tests relating to skin and oral pathology are reviewed and signed by individuals other than the hospital's pathologist, the persons signing have adequate qualifications for this task. We believe the naming of specific board certifications in these cases is essential to patient health and safety. This approach is also consistent with the requirements placed on independent clinical laboratories and laboratories licensed to engage in interstate commerce under the Clinical Laboratories Improvement Act.

We have also corrected an inadvertent error in § 482.27(c)(1)(ii) that would have required tissue examination under the technical supervision of a pathologist or other individual who is certified in *both* skin and oral pathology, in cases where the laboratory performs anatomic pathologic services.

Comment: Several commenters recommended that tissue examinations and blood banking and transfusion services be performed or directed by a doctor of medicine or osteopathy rather than under the technical supervision of a doctor of medicine or osteopathy. Another suggested changing the qualification of the nonpathologist physician performing blood banking and transfusion services from "with at least 2 years of experience in immunohematology subsequent to graduation" to "qualified by appropriate training or experience in transfusion therapy."

Response: We have not changed the NPRM language in these final regulations in response to the first recommendation because we believe a hospital should have maximum flexibility to use personnel in the most effective manner and that technical supervision is more appropriate than direction for purposes of managing a subset of the total laboratory's services. A hospital is free to establish more stringent standards if it desires. We agree that the suggested language governing the experience of a doctor of medicine or osteopathy who is not a pathologist is less prescriptive and more appropriate to the types of services involved. However, we believe both training and experience are needed and have made this change in the final regulations.

Comment: Some commenters disagreed with the NPRM requirement that the medical staff and a pathologist determine which tissue specimens require a macroscopic (gross) examination or microscopic examination, or both, and pointed out that all tissue should receive a macroscopic examination.

Response: We have not accepted this comment because we believe that there are cases in which the medical staff may determine that macroscopic examination of tissues would not be productive. Therefore, we have permitted the medical staff to determine when tissues require only a macroscopic examination or both a macroscopic and a microscopic examination.

Comment: Commenters suggested that we move the provisions for the availability of blood and donors for emergency situations from the standard on the adequacy of laboratory services to the standard on blood and blood products.

Response: We have not accepted this suggestion because we believe the necessity and importance of providing blood in emergencies are highlighted in the standard for the adequacy of laboratory services. We believe the impact of this requirement would be lessened by placement in another standard.

Comment: Commenters recommended that we retain the requirement for the performance of routine urinalysis and hemoglobin or hematocrit tests for surgical patients or that the hospital be required to establish rules on when these tests must be performed routinely.

Response: We have not accepted this recommendation because we continue to believe the imposition of prescriptive requirements is inappropriate. We believe that it would be inappropriate for the Federal Government to require hospitals to provide specific services to patients. The ordering of specific services or routine tests should be the responsibility of the practitioner responsible for the patient's care. Moreover, retaining this requirement would be inconsistent with the policy discussed earlier under which Medicare contractors no longer make automatic payments for certain tests.

Comment: Commenters stated that the requirement for prompt antibody identification, while ideal, is not realistic for small hospitals and is unnecessary for successful transfusion therapy.

Response: We believe prompt antibody detection is necessary, particularly in cases of transfusion reaction, but we agree that identification of antibodies may occur later. We have revised the regulation to reflect this change.

Comment: Commenters recommended that the regulations make clear that transfusion services (and accompanying laboratory procedures) are sometimes contracted out and, in these cases, the contractor should retain samples of blood units rather than the hospitals.

Response: We believe that the procedures for retaining samples of blood units used by contractors of transfusion services vary widely. Therefore, we have revised the regulations on the basis of this comment to require retention of samples according to procedures established by the hospital. Thus, the hospital will be allowed maximum flexibility in arranging for this requirement to be met, but will still be responsible for assuring that samples are available.

Comment: Commenters argued that the FDA requirements for blood and blood products are sufficient for patient health and safety.

Response: This issue will be included among the issues to be addressed separately with FDA and CDC. Until these discussions take place, no change will be made. If a further change is needed, we will publish it in a future **Federal Register** document.

Comment: Some commenters believed that our failure to discuss the application of the condition to specialized laboratories leads to confusion. Others suggested that special purpose laboratories be exempt from the condition. Still others believed all laboratories should meet at least portions of the conditions.

Response: We have not made any changes on the basis of these comments due to the lack of an acceptable definition that distinguishes a "special purpose" laboratory from a "general" laboratory. We will include this issue, among others, for discussion with FDA and CDC.

Comment: Some commenters requested us to restore the statement: "The laboratory does not perform procedures and tests which are outside the scope and training of the laboratory personnel."

Response: We concur with the intent of this comment but believe it is adequately addressed in § 482.27(c) (3) and (4) that requires the laboratory director to assure that no procedures are performed outside the scope of the personnel's qualifications.

N. Food and Dietetic Services (§ 482.28, previously § 405.1025)

• *Existing provisions.* Current regulations provide for the existence of a professionally staffed dietary department integrated into the hospital. Detailed standards are included on organization, facilities, diets, and conferences.

• *NPRM provisions.* We proposed to retain the condition on food and dietetic services, but to delete requirements that are overly prescriptive and details that are no longer necessary. We proposed to delete—

• References to requirements for policies and procedures and the supervision of the staff;

• The specific details on the organization of the department;

• The detailed requirements for the facilities of the dietary department. We proposed to provide for a general statement under the condition on physical environment (§ 482.41(c)(4)) that the kitchen and dietetic services areas must be well-ventilated and properly equipped and maintained;

• The specific details relating to therapeutic diets;

• The requirement that the director of dietetics participate in meetings with other department heads.

We proposed this revision because we believed that it would be less prescriptive, but would not lower the quality of the dietetic services. The proposed § 482.28(a) provided for a full-time employee to serve as director of the food services and a qualified dietitian on a full-time, part-time, or consultant basis.

• *Public comments.* Commenters recommended that the regulations be revised to—

• Specify certain responsibilities and functions to be assigned to the dietitian. They considered that patient nutrition would suffer without this professional involvement.

• Specify that the director of the food service must be qualified by experience, education, and training.

• Specify that the organization of the dietetic services must be appropriate to the scope of the services offered.

• *Responses and provisions of final regulations.* We concur with the recommendation that the regulations specify general qualifications of the director of food service and have revised the regulations to specify that the director must be qualified by experience or training. We have not included the recommended specific responsibilities and functions of the dietitian because we believe to do so would be inconsistent with our stated objective of removing unnecessarily prescriptive requirements from Federal regulations. Hospitals wishing this level of participation by the dietitian would not be precluded from doing so if they desire.

We agree that the organization of the dietetic service should be appropriate to the scope of the services offered but believe that the regulations as proposed and as adopted as final accomplish this basic intent.

We have made an additional deletion in this condition of the credentials requirements. This is consistent with our basic approach to the issue of credentialing discussed earlier. We also have added a provision to the nutrition standard to specify that the nutritional needs of patients must be met in accordance with recognized dietary practices (for example, the dietary principles that are outlined in the publication, *Nutrition and Your Health: Dietary Guidelines for Americans*, published jointly by HHS and the U.S. Department of Agriculture).

The remainder of the proposed regulations are adopted unchanged as final.

O. Utilization Review (§ 482.30, previously § 405.1035)

• *Existing provisions.* Sections 1861 (e)(6) and (k) and 1902(a)(30) of the Act provide for utilization review (UR) of services furnished by institutions to individuals entitled to benefits under the Medicare and Medicaid programs. The current regulations at § 405.1035 that implement these sections contain detailed standards on approval and operation of the UR plan, written description of the plan, performance of review functions, admission review, extended stay review, records, administrative staff responsibilities,

medical care evaluation studies, and applicability to or coordination with other utilization review activities.

• *NPRM provisions.* In the January 1983 NPRM, we proposed to eliminate the overly prescriptive and detailed specifics of § 405.1035 by replacing the current regulations with language from the statute. The revised rule proposed to require the review of admissions, durations of stay, and professional services, with respect to medical necessity and for the purpose of promoting the most efficient use of facilities and services. Reviews would be conducted by a hospital committee or outside group and written notification of findings made to the patient, the physician, and the institution. The proposal also specified who can make determinations and the timeframe for notification of these determinations. Finally, the NPRM proposed to retain a provision found in current regulations that prohibits the committee's review from being conducted by a physician who was professionally involved in the case being reviewed or who is financially interested in the hospital.

• *Legislative and regulatory changes affecting hospital reimbursement and utilization review.* The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97–248) amended Part B of Title XI of the Social Security Act by establishing the Utilization and Quality Control Peer Review Organization (PRO) program. This program replaces the Professional Standards Review Organization (PSRO) program. The responsibilities that PROs are assuming are similar to those previously exercised by PSROs. PROs review health care services funded under Medicare to determine whether those services are reasonable, medically necessary, furnished in the appropriate setting, and are of a quality that meets professionally recognized standards. Congress created the PRO program in order to redirect, simplify, and enhance the cost-effectiveness and efficiency of the peer review of services reimbursed by Medicare.

Section 1902(d) of the Act was also amended by the Peer Review Improvement Act of 1982. If a State contracts with a PRO which has a Medicare contract to perform medical or utilization review functions under Medicaid, the utilization review requirements (including utilization review plans) can be deemed met under certain circumstances.

The Social Security Amendments of 1983 (Pub. L. 98–21) established a prospective payment system for Medicare and amended section 1866(a)(1)(F) of the Act to specify that hospitals seeking reimbursement under the prospective payment system must enter into agreements with PROs by specified dates to review the following:

• The validity of diagnostic and procedural information supplied by the provider.

• The completeness, adequacy, and quality of care provided.

• The appropriateness of admissions and discharges.

• The appropriateness of care provided or proposed to be provided for which payment is sought under an "outlier" basis under the prospective payment system.

On September 1, 1983, we published interim final regulations to implement a prospective payment system (PPS) for most Medicare inpatient hospital services, as required by the Social Security Amendments of 1983. (Those regulations were published in the **Federal Register** at 48 FR 39752.) To contribute to the implementation of the new legislation affecting Medicare payment, we established a new § 405.1042 in the September 1 document. That new section contains a special condition of participation setting forth revised utilization review requirements for hospitals paid under the prospective payment system. The intent of this special condition is to ensure that hospitals paid under prospective payment are not unnecessarily required to meet utilization review requirements designed to address the utilization problems of reasonable cost reimbursement. On January 3, 1984, we published a final version of the interim final regulations to implement the prospective payment system (49 FR 234). In that document, we revised the title and paragraph (c) of § 405.1042 for clarity, but did not make any other changes in that section.

The Deficit Reduction Act of 1984 (DRA) revised the provisions of the Social Security Amendments to require that all hospitals, not just those receiving payment under the prospective payment system, must maintain an agreement with a PRO. Effective November 15, 1984, all hospitals must have an agreement with a PRO as a condition of payment under Medicare.

In June 1984, HCFA began awarding contracts to PROs. On April 17, 1985, we published final regulations governing implementation of the PRO legislation (50 FR 15312). Those regulations specifically state that PRO review activities to determine whether inpatient hospital services are reasonable and medically necessary and are furnished at the appropriate level of care fulfill the utilization review requirements set forth in 42 CFR 405.1035 and 405.1042 (42 CFR 466.86(b)). The regulations also allow for Medicaid State plan requirements for utilization review (including utilization review plans) to be deemed met if the State agency contracts with a PRO performing Medicare review (42 CFR 456.2).

• *Public comments, responses, and provisions of final regulations.*

The new § 405.1042 did not replace the preexisting regulations under § 405.1035 for non-PPS hospitals, but adopted the January 1983 proposed provisions on utilization review as a condition of participation applicable to hospitals under the prospective payment system. Some of the public comments received on the January 1983 proposed regulations, as the comments related to prospective payment, were responded to in the preamble to the September 1983 document. Those comments and responses are equally applicable to the provisions for the hospitals that are not under the prospective payment system. Those comments and responses are cross-referenced here instead of being reprinted (see 48 FR 39790–39792). We also have not reprinted the public comments and responses on § 405.1042 that were published in the preamble to the January 3, 1984, final regulations. (We have redesignated § 405.1042 in these final regulations under the revised § 482.30, with some technical changes because the requirements for both PPS and non-PPS hospitals are contained in one section under the new Part 482, as explained below.)

Since all hospitals must now have an agreement with a PRO as a condition of payment under Medicare and the regulations under section 466.86(b) specify that PRO review activities fulfill the utilization review requirements for hospitals, we considered merely deleting current §§ 405.1035 and 405.1042, and not specifying any utilization review requirements in these regulations. However, this approach would not have provided any basis in our regulations for applying the provisions of sections 1861(e)(6) and (k) in those unusual cases in which a PRO does not in fact perform the review provided for in its contract with HCFA. To provide for such contingencies, we are issuing the utilization review requirements set forth in § 482.30 of these final regulations. These requirements, as well as the public comments on our proposals, should be viewed in the light of their extremely limited scope of applicability.

Three public comments relating to utilization review requirements in psychiatric hospitals were not

addressed in the September 1983 regulations. These are as follows:

Comment: One commenter noted that the UR requirements apply in psychiatric as well as general hospitals, and suggested that, because of this applicability, review should not be required merely for extended stays, but should be required on a specified basis that is appropriate to each patient's needs and treatment plan.

Another commenter objected to our proposal to delete a number of specific requirements related to psychiatric care from the current regulation (for example, the requirements for medical care evaluation studies). The commenter believed that these provisions provide important protections for psychiatric patients. One commenter suggested that the term "medical necessity" be changed to "psychiatric or medical necessity" to recognize that UR requirements will apply in psychiatric as well as general hospitals.

Response: We believe the statute and regulations already require the type of review of psychiatric care suggested by the commenter. Section 482.30(c) makes it clear that the UR committee's considerations cover not only the necessity for admissions and lengths of stay but also the provision of professional services. Because reviews may be conducted on a sample basis, hospitals are now free to select specific criteria involving patient treatment plans for scrutiny by the UR committee.

The revision of the previous utilization review condition was undertaken to remove the burdens of overly prescriptive requirements. This effort was not meant to substitute for professional judgments or to remove protections for classes of patients. The streamlining of review efforts should free hospitals from unnecessary burdens so they can give attention to the specific and specialized needs of their patient population. The responsibility for assuring that necessary reviews take place that are tailored to an institution's specific needs lies with the hospital's medical staff rather than the Federal Government. We have, therefore, retained the approach taken in the NPRM in the final regulations. As noted above, section 1861(k) and both the current and these final regulations require review of services furnished by hospitals, including psychiatric hospitals. We believe use of the new term suggested is not needed to clarify this, and could lead to confusion.

These final regulations contain, under one section (§ 482.30), the conditions relating to utilization review for both hospitals under the prospective payment system and hospitals under the cost reimbursement system. We have made several other clarifying changes. We have revised the regulation to specify that the utilization review condition is satisfied by PRO review activities to determine whether inpatient hospital services are reasonable and medically necessary and are furnished at the appropriate level of care and that the condition, unlike other conditions, applies only to Medicare and Medicaid patients. We have made a technical change by deleting the provision (at proposed § 482.30(d)(3)(iii)) that requires notice of the UR committee's determination regarding admission or continued stay no later than 2 days after the end of the certified period. A time limit is already specified in § 482.30(d)(3)(ii). In addition, we have eliminated the use of the term "final determination" throughout the condition to make it clear that a UR committee's determination regarding the need for a continued stay is not a "final determination" of the Secretary as that term is used in other parts of the Medicare regulations. We have also made changes in the regulations to eliminate potentially confusing use of the term "physician." For example, we have used the term "practitioner responsible for the patient's care" instead of "attending physician." These changes are needed for consistency with our approach to the definition of physician issues discussed elsewhere in this preamble. Other minor editorial changes have been made for clarity.

P. Physical Environment (§ 482.41, Previously § 405.1022)

• *Existing provisions.* Section 1861(e)(9) of the Act permits the Secretary to mandate requirements for hospitals relating to the health and safety of patients. One of these requirements addresses the physical environment of the hospital. Current regulations at § 405.1022 specify detailed standards for buildings, life safety from fire, sanitary environment, and diagnostic and therapeutic facilities.

• *NPRM provisions.* The NPRM proposed to make the following revisions:

1. Current § 405.1022(a) contains many details regarding the functional features of the physical plant. We proposed to revise the requirements to state that the condition of the physical plant and overall hospital environment must be developed and maintained so that the safety and well-being of all patients are maintained. We proposed to delete specific reference to isolated power since requirements pertaining to isolated power are contained in the Life Safety Code. We proposed to retain the elements addressing emergency power, gas, water, lighting, and obstacle-free corridors. All other elements and details would be deleted as redundant.

2. Current § 405.1022(b) mandates that hospitals comply with the 1981 edition of the Life Safety Code of the National Fire Protection Association and contains a "grandfather clause" to provide for facilities meeting the 1967 edition of the Code as of November 26, 1982. The regulations also require a hospital to maintain written evidence of regular inspection and approval by State or local fire control agencies. In the preamble to the 1983 NPRM, we erroneously cited the adoption of the 1981 edition as a proposed change to the regulations. The 1981 edition had already been incorporated in final regulations published on October 26, 1982 (47 FR 47388). We have retained the October 1982 final regulation changes in these regulations.

The National Fire Protection Association again has revised the provisions of the Life Safety Code in a 1985 edition. HCFA is developing a notice of proposed rulemaking as a separate document to address the application of the 1985 edition to hospitals and other Medicare and Medicaid providers and to solicit public comments. The provisions of this NPRM, when issued as final, will be incorporated in § 482.41 of these regulations.

3. In the NPRM, we noted that current § 405.1022(d) requires the hospital to provide adequate facilities for diagnostic and therapeutic services. We proposed to modify this provision by specifically requiring hospitals to provide adequate facilities for all services, not just diagnostic and therapeutic services.

• *Public comments.* A number of commenters expressed concerns relating to various technical aspects of the condition on physical environment. For example, they recommended that we include radiology in the list of areas that require emergency power and lighting.

• *Response and provisions of final regulations.* We believe the suggestions made by the commenters are too detailed for inclusion in Federal regulations. Therefore, we did not adopt these comments.

Q. Infection Control (§ 482.42, Previously § 405.1022(c))

• *Existing provisions.* Current regulations under the condition on physical environment discuss the sanitary environment of the hospital. In the United States, nosocomial infections occur in approximately 5 percent of the

patients admitted to acute-care hospitals. These infections subject patients to significant additional pain and risk, prolong a hospital stay by several days on the average, and lead to more than an extra billion dollars a year in direct hospital charges.

• *NPRM provisions.* Because of the enormity of the problem, we proposed to elevate infection control provisions to the level of a separate condition of participation. The proposal placed more accountability on hospitals to prevent, control, and report hospital infections and communicable diseases, and less emphasis on the number of persons necessary to accomplish the task. We proposed to delete the current requirement for an infection control committee and instead require designation of an infection control officer or officers. This flexibility would give hospitals the option of retaining existing committees, but hospitals with limited staff could comply by the designation of one person. We also proposed to require that the hospital keep a log to identify problems and that improvement be made when problems are identified.

• *Public comments.* One commenter recommended that we revise the requirement for an infection and communicable disease incident log to allow the hospital to determine what types of incidents would be documented in the log.

• *Response and provision of final regulations.* We are issuing this condition in the final rule as proposed, with some minor editorial changes and a clarifying change to indicate that the log must cover incidents of communicable diseases. We do not believe further changes are necessary. We believe that it is essential to compile and maintain all infection and communicable disease incident reports in a single source so that patterns of infection and communicable disease problems in the hospital as a whole can be identified and corrective action can be taken.

R. Surgical Services (§ 482.51, previously § 405.1031(a))

• *Existing provisions.* Current regulations outline detailed standards for policies and procedures for surgical privileges, maintenance of the operating rooms, and evaluation of the surgical patient.

• *NPRM provisions.* In the NPRM we proposed to convert these standards into a condition. We proposed to retain most of the current language on surgical services, but delete the overly prescriptive details about the operation of the service, such as the location of the operating room and the posting of operating room rules.

We also proposed to include under this condition the provisions that are currently under the nursing department located at § 405.1024(d) that specify supervision of operating rooms by a registered nurse and that permit surgical technologists and licensed practical nurses to serve as "scrub nurses" under the direct supervision of a registered nurse. Scrub nurses are those who scrub, dress in sterile garb, and manage the instruments at the operating practitioner' s direction.

The NPRM specified that only registered nurses may perform circulating duties in the operating room, except that licensed practical nurses and surgical technologists may assist in circulating duties under the direct supervision of a qualified registered nurse. Circulating duties include acquiring emergency equipment or staff and furnishing patient care services that require independent judgment and expertise. We noted that this proposal was different from that proposed in the 1980 NPRM that would have permitted licensed practical nurses and surgical technologists to perform circulating duties in the operating room.

• *Public comments, responses, and provisions of final regulations.*

Comment: Many commenters, mostly surgical technologists, objected to the continuance of the requirement that a registered nurse serve as the circulating nurse in the operating room, and that a surgical technologist or licensed practical nurse scrub under the supervision of a registered nurse. They stated that surgical technologists and licensed practical nurses are qualified through education and experience to perform these functions without supervision of a registered nurse. Commenters added that this requirement would contribute to higher hospital costs as registered nurses have higher salaries than licensed practical nurses or technologists. These individuals also stated that surgical technologists are better prepared for these responsibilities. Finally, many argued that regulation of these functions is an inappropriate Federal activity and that only State law and hospital rules and regulations should govern staffing of these functions.

Response: In response to these comments, we have revised these regulations to state that qualified registered nurses may perform circulating duties in the operating room, and that licensed practical nurses and surgical technologists may, in accordance with applicable State laws and approved medical staff policies and procedures, assist in circulatory duties under the supervision of a qualified registered nurse. For purposes of the regulations, we have broadened the supervision requirement and will consider it to be met if the qualified registered nurse is immediately available to respond to emergencies. In the NPRM we had proposed that the registered nurse supervision be direct, i.e., over the shoulder. We have modified our approach because we believe it will give hospitals maximum flexibility to manage their internal procedures, according to their medical staff policies, subject to applicable State law, and will recognize appropriately the special qualifications of surgical technologists. At the same time, however, the approach will help protect patient health and safety by ensuring the ready availability of a registered nurse who has training and experience in all aspects of comprehensive skilled patient care.

Comment: Some commenters objected to the requirement that a registered nurse supervise the operating room as it appears to preclude a hospital from having a doctor of medicine or osteopathy perform this function. Other commenters recommended that the regulation require that only a doctor of medicine or osteopathy supervise the operating room because only such an individual has training to assure quality care.

Response: We have revised the regulation to indicate that either a doctor of medicine or osteopathy or an experienced registered nurse may perform this function. We do not believe that it is essential in all circumstances that a doctor of medicine or osteopathy supervise the operating room. However, the revised language of the regulation will allow such supervision where the hospital chooses to do so.

Comment: One commenter recommended that we revise the regulation to specify that surgical privileges must be delineated for all physicians "*licensed to perform* surgery in accordance with the competencies of each physician *and supervised by a doctor of medicine or doctor of osteopathy.*" The commenter believed that, to assure quality of care, it is essential that the patient be under the overall supervision of a fully licensed doctor of medicine or osteopathy.

Response: We have not accepted this recommendation because we believe that compliance with the quality assurance condition will assure the quality of care.

Comment: One commenter recommended that we require the

hospital to have a committee of surgeons, anesthesiologists, and operating room nurses to develop operating room rules and procedures in order to assure the input of doctors of medicine or osteopathy in all major decisions regarding the operating room.

Response: We have not accepted this recommendation because we do not consider that it is necessary to patient health and safety for us to require this type of committee. We are confident that governing bodies and medical staffs of hospitals will assure the involvement of appropriate individuals where major decisions about the operating room are to be made.

7. Anesthesia Services (§ 482.52, previously § 405.1031(b))

• *Existing provisions.* Current regulations contain standards for staff privileges, administration of anesthetics, and the maintenance of strict safety controls.

• *NPRM provisions.* Because of certain risk factors associated with administration of anesthesia, we proposed to elevate the requirements for anesthesia services to the level of a condition. Many factors contribute to the risk associated with exposure to anesthesia. The anesthesia itself poses a threat, especially to the patient's respiratory and cardiovascular systems. Other factors identified by studies as affecting anesthesia outcome are the skills and knowledge of the anesthetist, familiarity with equipment, adequacy of the preanesthesia work-up, and the method and circumstances of anesthesia administration. Therefore, anesthesia services are considered a "high-risk" area. We proposed to retain the concept of the preanesthetic examination but require that the examination be done no longer than 48 hours before surgery by an anesthesiologist or person administering the anesthesia. We proposed to permit an anesthesia assistant (physician's assistant with specialized training in anesthesia) to administer anesthesia under the supervision of a physician. We also proposed to modify the condition to change the term "registered nurse anesthetist" to "certified registered nurse anesthetist (CRNA)."

• *Public comments, responses, and provisions of regulations.*

Comment: Three commenters requested that the requirement that CRNAs administering anesthesia be under the supervision of the operating physician be expanded to also permit supervision by anesthesiologists. They argued that this is consistent with current medical practice and beneficial to patient health and safety.

Response: We concur and have revised the regulation to reflect the recommendation.

Comment: One commenter recommended that the requirement for direction of the anesthesia services by a qualified physician be revised to require the director to be a doctor of medicine or osteopathy who is board certified in surgery and has at least 3 years of clinical training, 2 of which are in clinical anesthesiology.

Response: We agree with the recommendation that the director of the service be a doctor of medicine or osteopathy and have made the appropriate change. We have not accepted the additional certification and clinical training requirements because we believe that they may create a significant hardship in smaller and rural hospitals in trying to obtain individuals with these qualifications.

Comment: Several commenters requested that we delete the reference to administration of anesthetics by anesthesia assistants. They contend that anesthesia assistants are not trained in general patient care, which they stated is a critical requisite for individuals involved in the administration of anesthesia. Other commenters noted that these individuals are permitted to administer anesthesia under the supervision of the operating physician in freestanding ambulatory surgical centers (ASCs) and ambulatory surgery units of hospitals. Some commenters noted that the correct reference to this allied health profession is "anesthesiology assistants," whom they contend are trained only to perform duties under the direct supervision of an anesthesiologist.

Response: We have retained anesthesia assistants (properly called anesthesiology assistants) in the list of those who may administer anesthesia in hospitals. These individuals are permitted to perform these functions under some State laws and there is currently at least one university program in operation to train individuals for this allied health profession. However, since there is no nationally recognized accreditation and testing program for anesthesiology assistants, we have modified the qualification criteria in the regulations to specify that anesthesiology assistants must be permitted by State law to administer anesthesia, must have successfully completed a 6-year program for anesthesiology assistants, 2 years of which consist of specialized academic and clinical training in anesthesia, and must be under the direct supervision of an anesthesiologist who is physically present. The revised qualification criteria are consistent with the requirements for completion of the university program currently in operation and will ensure sound academic and clinical background in the administration of anesthesia.

Anesthesiology assistants are not educated and experienced in comprehensive patient care as are CRNAs. They are, instead, educated in performing specific skilled tasks related to the administration of anesthesia. While the general education of CRNAs in patient care enables them to function with a physician available in close proximity to assist in emergencies, the absence of specialized education in comprehensive patient care for anesthesiology assistants requires that a physician with specialized experience in anesthesia be physically present in the operating room to monitor the patient's condition. We have required that, unlike CRNAs, it is necessary for an anesthesiology assistant to have supervision by an anesthesiologist rather than the operating physician and also that the anesthesiologist must be physically present in the operating room.

Comment: One commenter stated that it would be impractical to require, in the case of outpatient surgical patients who are ordinarily discharged shortly after surgery, that a post-anesthesia follow-up report be completed within 48 hours of each operation. The commenter recommended that we permit an exception to the 48-hour rule for outpatients.

Response: We agree that the 48-hour report requirement is impractical for outpatient surgical procedures. However, we do not believe it would be consistent with patient health and safety simply to provide an exception to the 48-hour rule for outpatient surgical procedures. Therefore, we have modified the regulations to specify that, in the case of outpatient surgical procedures, the patient must be evaluated for proper anesthesia recovery in accordance with policies and procedures approved by the medical staff.

T. Nuclear Medicine Services (§ 482.53)

• *Existing provisions.* There is no existing condition of participation for hospitals that relates to nuclear medicine.

• *NPRM provisions.* In the NPRM, we proposed to add a new condition on nuclear medicine. The requirements of this condition would apply only to those hospitals that choose to provide nuclear medicine services. These requirements are necessary because of the inherent

risks of procedures that expose patients to non-contained (uncovered) radiation and the increase in the number of hospitals offering these services. Specifically, we proposed regulations to require that the director of the services be a physician qualified in nuclear medicine. Recognizing that there are a number of ways for a physician to become qualified in nuclear medicine, we did not define "qualified." The NPRM also proposed to require that radioactive materials be handled in accordance with acceptable standards of practice, that the facilities be maintained for safe and efficient performance, and that signed and dated reports be maintained. If the hospital does not have organized nuclear medicine services, radiopharmaceuticals would be evaluated under the laboratory, radiology, or pharmacy services, as appropriate.

• *Public comments, responses, and provisions of final regulations.*

Comment: A commenter suggested that we incorporate by reference the qualifications for the director of nuclear medicine services contained in the Nuclear Regulatory Commission's updated requirements for its licensure of physicians to use byproduct materials on humans (**Federal Register**, December 2, 1982, 47 FR 54376). The comnenter also noted that the National Council on Radiation Protection and Measurements provides recognized quidance on the safe handling of nuclear material, and suggested that we revise the regulations to require compliance with the Council s Report 70. Another commenter suggested that we require the director of the nuclear medicine service to be a fully licensed doctor of medicine or osteopathy.

Response: We agree with the suggestion that we require that the director of the nuclear medicine service be a doctor of medicine or osteopathy and have revised the regulations accordingly. However, we have not adopted the recommendation that we explicitly require compliance with the Nuclear Regulatory Commission's regulations or with Report 70 of the National Council on Radiation Protection and Measurements. We believe that adopting the former comment could cause an unnecessary duplication of other Federal requirements and that the latter recommendation is addressed by our general requirement that nuclear medicine services meet patient needs in accordance with accepted standards of practice.

Comment: A commenter suggested that we permit nuclear medicine services to be ordered only by a doctor of medicine or osteopathy because of the inherent hazards of this type of treatment. Another suggested that we revise the provision on who must order nuclear medicine services to change "a practitioner with clinical privileges" to "a physician whose scope of licensure and whose defined staff privileges allow such referrals."

Response: We have not adopted the former comment because we do not believe it is essential to patient health and safety to permit only doctors of medicine or osteopathy to order these services. However, we concur with the latter suggestion to the extent that we believe that specifying that nuclear medicine services are to be provided by a practitioner whose scope of licensure and whose defined staff privileges allow such referrals will provide adequate safeguards for patients and, at the same time, permit hospitals and their medical staffs to determine, within the restrictions imposed by Federal or State licensure laws, which practitioners will be permitted to order nuclear medicine services. Therefore, we have revised the regulations accordingly.

Comment: One commenter suggested that we require written policies and procedures for the delivery of nuclear medicine services to make it easier for State survey agencies to determine compliance with the condition.

Response: In view of the specificity of the requirements of the condition, we do not believe State surveyors will have difficulty in determining compliance. Moreover, requiring hospitals to have written policies and procedures would increase the paperwork burden for hospitals without necessarily enhancing the health and safety of hospital patients. Therefore, we did not adopt this suggestion.

Comment: One commenter suggested that we specify in the regulations that hospitals may furnish nuclear medicine services under an arrangement with another organization.

Response: The language of the new § 482 12(e), which sets forth a specific standard for contracted services, makes it clear that hospitals may furnish services under arrangements. Therefore, we do not believe it is necessary again to specify this in this section.

U. Outpatient Services (§ 482 54, Previously § 405 1032)

• *Existing provision.* Current regulations require that organized outpatient departments of hospitals have effective policies and procedures, be appropriately staffed, maintain medical records, and have suitable facilities. Detailed standards are provided in each area.

• *NPRM provisions.* We proposed to modify this condition to retain only two of the standards, organization and personnel, and delete the others as being overly prescriptive and duplicative of requirements found in other conditions.

• *Public comments.* Commenters recommended that we specify in the condition the qualifications of the individual who will direct outpatient services.

• *Response and provision of final regulation.* We have adopted the condition in the final rule as it was proposed. We have not specified qualification requirements for the director of services because we believe that it is essential that individual hospitals have the flexibility to determine the qualifications of professionals who direct most of the organized services in the institution, a point we have discussed earlier under personnel credentialing. The scarcity in some health care disciplines of personnel with credentials from private professional groups in some rural and inner urban areas necessitates alternatives to the use of credentialed personnel.

V. Emergency Services (§ 482.55, Previously § 405.1033)

• *Existing provisions.* Current regulations specify requirements for hospitals that choose to provide emergency services. This condition includes requirements for the organization and direction of the service, standards for emergency facilities, and medical and nursing personnel, and requirements for emergency room records.

• *NPRM provisions.* We proposed to remove those standards that were overly prescriptive and overlap with requirements of other conditions. In the NPRM, we proposed to modify the condition statement to assure that the hospital meets the emergency needs of patients in accordance with acceptable standards of practice. In addition, we proposed to add a new standard to specify that if the hospital does not have an emergency department, it must have written referral procedures or be part of a community-wide emergency services program.

• *Public comments.* Many commenters recommended that emergency services be supervised by a doctor of medicine or osteopathy. Commenters also recommended that the requirements relating to a hospital that does not have an organized emergency service be moved to the governing body condition to emphasize the mandatory

rather than optional nature of this requirement. One commenter requested that we retain the requirement that a physician see every patient who arrives at the hospital for emergency treatment.

• *Responses and provisions of final regulations.* We believe that the NPRM language relating to the supervision of the emergency services allows hospitals maximum flexibility in their organization and staffing of the service and that Federal requirements for education or experience of supervisors would be counter-productive. We believe that the medical staff's overall responsibility for quality of care will ensure that the emergency services are appropriately supervised by a member of that staff. In addition, we believe that many emergency room visits are for non-urgent problems that could be screened out or managed by someone with lesser skill and education than a doctor of medicine or osteopathy.

We concur with the commenters that the development and implementation of specific policies and procedures relating to the handling of emergencies in the absence of an organized service should be a mandatory rather than an optional requirement. We have, therefore, revised the governing body condition to add a requirement (§ 482.24(f)) that if the hospital does not have an organized emergency department or service, the governing body must assure that the medical staff has written policies and procedures for appraisal and initial treatment of emergencies, and referral when appropriate.

We do not agree that it is necessary for every patient who arrives at a hospital for treatment to be seen by a doctor of medicine or osteopathy. We believe that development of emergency service procedures by the medical staff will assure that care is provided by a doctor of medicine or osteopathy when it is necessary. We have, however, revised the regulations to indicate that emergency service personnel must be qualified in emergency care. We have made this change to ensure that personnel are qualified to determine when care by a doctor or medicine or osteopathy is needed.

The remainder of the proposal is being adopted as final without further change.

W. Rehabilitation Services (§ 482.56, previously § 405.1031(d))

• *Existing provisions.* Current regulations contain standards for organization of and procedures for providing rehabilitation services such as physical, occupational, and speech therapy, and detailed credentials for staff.

• *NPRM provisions.* We proposed to simplify these provisions by stating that if the hospital provides for physical or occupational therapy (whether or not the services are provided by a distinct department), those services would have to be furnished under the supervision of a qualified therapist. We included a cross-reference to § 405.1702(j) which specifies qualification requirements for speech pathologists.

• *Public comments.* Commenters made the following recommendations:

—That we require a physician (i.e., a doctor of medicine or osteopathy) to direct the services because of the skills and knowledge of this type of individual. They believed that this requirement would assure the quality of patient care. Some commenters stated that the absence of physician direction of the services was inconsistent with our requirement for physician direction in comprehensive outpatient rehabilitation facilities (CORF).

—That physical therapists be allowed to prepare the plan for therapy. They stated that this approach represents current practice.

—That, if audiology services are offered, we require that they be furnished by or under the supervision of a qualified audiologist.

• *Responses and provisions of final regulations.* We have adopted this condition in the final regulations as it was proposed, with one exception. We have deleted the qualification requirements for therapists and specified responsibility of medical staff for determining requirements to reflect our basic approach of removing credential requirements. We have not required a doctor of medicine or osteopathy to direct the services because we believe that such a requirement is overly prescriptive and may have the unintended affect of discouraging necessary, but limited, rehabilitation services in smaller hospitals. In an acute care setting, doctors of medicine or osteopathy are readily available and involved in planning patient care services. In an outpatient setting, such as in a CORF, however, the type of services given involves many health care professionals and the coordinative role by a doctor of medicine or osteopathy assures the continuity of care without duplication or overlap. As a result of enactment of section 2342 of the Deficit Reduction Act of 1984, Pub. L. 98–369, physical therapists are authorized under law to prepare therapy plans. These regulations, as drafted, do not need to be modified. A change is planned to conform 42 CFR 405.1635(d) to the statute. We did not accept the recommendation that audiology services be furnished by or under the supervision of a qualified audiologist because it is inconsistent with our stated objectives of removing unnecessarily prescriptive requirements from Federal regulations. We believe the qualifications of personnel should be at the discretion of the medical staffs of individual hospitals.

X. Respiratory Care Services (§ 482.57)

• *Existing provisions.* Current regulations do not contain specific standards on respiratory care services.

• *NPRM provisions.* We proposed to add a new condition that would apply only if the hospital has organized respiratory care services. The proposed regulations described staffing requirements.

• *Public comments, responses, and provisions of final regulations.*

• *Comment:* Commenters recommended that we require that respiratory care services be provided only on the orders of a doctor of medicine or osteopathy. They noted that the multiple uses of these services require medical evaluation and recommendation of their use. Other commenters argued that we should require direction of respiratory care services by a doctor of medicine or doctor of osteopathy. They noted that, since this is a high-risk service with the potential for overutilization, such direction is the only effective means of evaluating the quality and appropriateness of service provided.

Response: We have revised the regulations to specify that these services be provided only on orders of a doctor of medicine or osteopathy because we are convinced that the requirement is necessary to patient health and safety. We created this condition because we recognized the risks in these services and we believe that this change is appropriate. For similar reasons, we have required that there be a director of respiratory care services who is a doctor of medicine or osteopathy with the knowledge, experience, and capabilities to supervise and administer the service properly. The director of respiratory care may serve on either a full-time or part-time basis. These requirements are consistent with the JCAH requirements for medical direction of respiratory care services, except that we have explicitly allowed the director to serve on a part-time basis. We adopted a provision for part-time service in order to avoid imposing undue hardship on smaller hospitals while still assuring the health and safety of patients requiring these services.

Comment: One commenter urged that we require the director of a respiratory care laboratory to be a pulmonologist or other doctor of medicine or osteopathy who is well-trained in pulmonary physiology.

Response: We have not accepted this recommendation because we are not convinced that there is a risk to patient health and safety if such a burdensome requirement is omitted.

In addition to these changes, we have revised the regulation to specify that it applies if the hospital provides any respiratory care services, without regard to how the services are organized.

Y. Specialty Hospitals—Special Rules for Psychiatric and Tuberculosis Hospitals

1. General Provision (§ 482.60, Previously § 405.1036)

• *Existing provisions.* Current regulations describe the special conditions that apply to psychiatric and tuberculosis hospitals, including special requirements and conditions for medical records and staffing.

• *NPRM provisions.* In the NPRM, we proposed to simplify the provisions for psychiatric and tuberculosis hospitals. The proposed condition would have required these facilities to be accredited by the Joint Commission on Accreditation of Hospitals or, if a distinct part of an institution, meet the requirements applicable to general acute care hospitals (§ 482.11 through § 482.57). In addition, we proposed to require that these hospitals keep sufficient clinical records and meet staffing requirements determined by HCFA to be necessary for carrying out an active treatment program. In addition, we invited comments on the feasibility of flexibly applying the medical records and staffing requirements for psychiatric hospitals to inpatient psychiatric units of general acute care hospitals, so that psychiatric patients are afforded equal protection regardless of the setting. When the general hospital conditions were originally developed, few acute care hospitals had psychiatric sections. Those that did generally had small units. Currently there are more than 1,300 psychiatric units in general hospitals, but there are no specialized standards applicable to those units.

• *Legislative changes.* The Deficit Reduction Act of 1984, Pub. L. 98–369, enacted July 18, 1984, deleted the requirement that psychiatric hospitals must be accredited by the JCAH (section 2340). In addition, section 2335 deleted specific references to tuberculosis hospitals and institutions and inpatient tuberculosis hospital services in titles XVIII and XIX of the Social Security Act in recognition of advances in treatment of tuberculosis. Patients with tuberculosis who require hospitalization now are cared for in facilities such as general hospitals that do not specialize exclusively in the treatment of this disease. The statutory provision does not change current policy on payment for hospital services to tuberculosis patients under Medicare and Medicaid. Any eligible individual with tuberculosis continues to be entitled to receive covered hospital services under these programs. We are revising proposed § 482.60 of the Medicare regulations and §§ 440.10, 440.40, 440.140, 440.150, 440.170, 440.250, 441.11, 441.13, and 456.51 of the existing Medicaid regulations to conform them to the statutory change.

• *Public comments, responses, and provisions of final regulations.*

Comment: Several commenters objected to the requirement that psychiatric hospitals be accredited by JCAH. They recommended that this accreditation be optional. One commenter objected to the continued omission of accreditation by the American Osteopathic Association (AOA) in lieu of JCAH accreditation or compliance with the general hospital conditions for distinct part psychiatric units. They recommended that we include language which would not preclude such deeming in the future.

Response: As stated earlier, section 2340 of Pub. L. 98–369 deleted the provision under the statutory definition of psychiatric hospitals under section 1861(f) of the Act that required JCAH accreditation. Thus, psychiatric hospitals (including a distinct part of institutions that are devoted to psychiatric care and services) can now meet all requirements for participation applicable to general acute care hospitals, except the utilization review requirements in sections 1861(e)(6) and (k) of the Act, either by JCAH accreditation or by meeting the hospital conditions of participation established in the Act. We have revised § 482.60 of these final regulations to reflect this change.

Comment: Commenters stated that the special conditions should not be applied to psychiatric units in general hospitals because these units typically serve a different type of patient than the psychiatric hospitals to which the special conditions are applicable. Some argued that the special conditions were clearly intended to ensure the existence of active treatment in freestanding psychiatric hospitals, and thus are not applicable to an acute care setting.

Conversely, some commenters argued that it is inappropriate to have two different sets of health and safety rules for patients in different hospital settings but with the same illnesses. They argued that either the special conditions should be applied to psychiatric units as well as psychiatric hospitals, or they should be eliminated for psychiatric hospitals. Commenters further argued that hospitals that meet the JCAH consolidated standards for psychiatric care should be deemed to meet the special conditions for psychiatric hospitals and, if the special conditions are applied to psychiatric units of acute hospitals, for those units. They believed that the JCAH requirements are sufficient to satisfy the statutory requirements in section 1861(f) for records and staffing in psychiatric hospitals, and that we are being unnecessarily inflexible in failing to deem accredited JCAH hospitals to be in compliance with the special conditions.

Other commenters argued that the special conditions should be revised to provide more flexibility so that they could be appropriately applied to psychiatric services in psychiatric units of acute care hospitals. They argued that the proposed special conditions are too specific, detailed, and prescriptive in all areas (including credentialing) for application in either setting.

Response: We have decided not to apply the special psychiatric conditions to psychiatric units of acute short-term hospitals. While there are some similarities between the conditions of patients in psychiatric units of short-term hospitals and the conditions of those treated in psychiatric hospitals, we are not convinced that these similarities are extensive enough to make it essential, for protection of patient health and safety, to apply the special conditions to psychiatric units. Moreover, some units provide services to patients who are significantly unlike patients in psychiatric hospitals. In these cases, it would clearly be inappropriate to impose the special conditions.

In separate regulations published on January 3, 1984 (49 FR 234), we have issued criteria that are to be used in identifying those distinct part psychiatric units that are similar enough to freestanding psychiatric hospitals (and different enough from short-term acute care hospitals) to warrant their exclusion from the prospective payment system for hospitals. In order to qualify for exclusion, these units must meet the special clinical records and staffing criteria at § 405.471(c)(4)(ii)(D) (recodified as § 412. 27 (c) and (d) on

March 29, 1985, 50 FR 12745). These criteria are similar to those contained in the special conditions of participation for psychiatric hospitals. Consequently, hospital units that are similar enough to psychiatric hospitals to warrant exclusion will be required to meet the same standards as psychiatric hospitals.

In addition, we have not specified that hospitals that meet JCAH consolidated standards for psychiatric care are deemed to meet the special conditions for psychiatric hospitals. The special conditions are governed by the statutory authority in sections 1861(f) (3) and (4) of the Act. We are currently considering whether it would be appropriate to deem the special conditions for section 1861(f) psychiatric hospitals as being met based on JCAH requirements.

We do not agree with the comments stating that the proposed special conditions are unnecessarily specific, detailed, and prescriptive. The conditions we proposed are significantly less prescriptive than the previous special conditions, and we do not believe further revision is needed.

2. Special Staff Requirements

• *Psychiatric Hospitals (§ 482.62, previously § 405.1038).* Current regulations specify detailed requirements for staff providing services in psychiatric hospitals. In the NPRM, we proposed:

—To simplify the current detailed specifications regarding staff in general to reflect instead the responsibilities and functions that are appropriate to a psychiatric hospital staff (§ 482.62(a)).

—To retain the requirement that the director of the inpatient psychiatric services meet the requirements for examination by the American Board of Psychiatry and Neurology (§ 482.62(b)). We believe that a director with these qualifications is necessary to monitor and assure the appropriateness of physician services. Similarly, the qualifications for the director of psychiatric nursing services would be retained to assure quality care.

—Under psychological services, to use the general language of the 1980 NPRM by stating that the director must be eligible to be considered a professional psychologist according to the American Psychological Association's standards for providers of psychological services (§ 482.62(e)). Current regulations (§ 405.1038(e)) discuss such details as whether or not the director has a doctoral degree.

—Under social services, to allow equivalent training and experience to substitute for the master's degree requirement for the director of social services (§ 482.62(f)).

• *Tuberculosis Hospitals (§ 405.1040, proposed § 482.64).* Current regulations specify details on the number and qualifications of staff to carry out an active program of treatment for patients. In the NPRM, we proposed to limit the requirements to the statutory language because of the small number of hospitals to which these requirements would apply.

As discussed earlier under section III.Y.1., section 2335 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) deleted the special staffing requirements for tuberculosis hospitals by removal of the references to tuberculosis hospitals. Therefore, we have made conforming changes in these final regulations by deleting the proposed § 482.64 that contained the special staffing requirements.

• *Public comments.*

No comments were received on the proposed changes to staff requirements of tuberculosis hospitals.

Comment: A commenter objected to the omission of the American Osteopathic Board of Neurology and Psychiatry from the specified credentials for the director of inpatient services in a psychiatric hospital. The commenter pointed out that this Board has requirements equivalent to those of the Board cited in the regulations.

Response: We agree and have revised the regulation to include the American Osteopathic Board of Neurology and Psychiatry.

Comment: Some commenters objected to the requirement that the director of clinical services in a psychiatric hospital meet the training and experience requirements for examination by the American Board of Psychiatry and Neurology. They argued that psychologists and others may be fully capable of performing this function.

Response: We have not changed the regulation because we believe that the unique skills of a doctor of medicine or osteopathy with advanced training and experience in psychiatry or neurology are necessary to manage and evaluate the care being provided. Only such an individual can assure that the staff members, including doctors of medicine and osteopathy, are meeting the full range of patient needs, including medical needs.

Comment: One commenter indicated that it is inappropriate to require that the director of psychological services must be "eligible" to be considered a professional psychologist by the American Psychological Association's standards. The commenter argued that use of the term "eligible" implied that there was an examination to be taken or the granting of a credential made by the organization when this is not the case. The commenter pointed out that, rather, there is a set of standards the hospital or surveyor would use to assess the individual.

Response: We have revised the regulation to accept the comment.

Comment: One commenter requested that we reinstate the requirement that the director of psychiatric nursing be a professional registered nurse. This commenter pointed out that a nurse with this level of training is needed to perform the duties of a psychiatric nursing director.

Response: We agree and have made this change.

Comment: Commenters objected to the deletion of the specific requirements regarding what therapeutic activities must be provided and the credentials of staff providing them. They argued that this provision has greatly enhanced the rehabilitation of psychiatric patients and to delete these requirements would adversely affect patients recovery.

Response: We have not changed the regulations because we believe that the deleted requirements concerning therapeutic activities were overly and unnecessarily prescriptive. We believe that the hospital should have the flexibility to determine which activities are most appropriate to its patient population and to determine the criteria to be met by employees providing these services.

In addition, we have made one clarifying change in the regulations. In the NPRM (§ 482.62(c)), we proposed to require that if medical and surgical diagnostic and treatment services are not available within the institution, qualified consultants or attending physicians must be immediately available, or a transfer agreement with a Medicare certified general hospital must be established. In these final regulations, we have revised this provision to state that if medical and surgical diagnostic and treatment services are not available within the institution, the institution must have an agreement with an outside source of these services to assure that they are immediately available or must have an agreement for transfer with a general hospital that participates in Medicare. We believe this change in wording will avoid any possible confusion regarding the meaning of "qualified consultants or attending physicians" and will make it clearer that it is the availability of services that is crucial to compliance with this requirement.

3. Special Medical Record Requirements (§ 482.61)

• *Existing provisions and NPRM provisions.—Psychiatric Hospitals (§ 405.1037, now § 482.61).* Current regulations specify special medical record requirements for psychiatric hospitals. In the NPRM, we proposed to retain the condition and elevate the requirements on the psychiatric evaluation, the treatment plan, progress notes, and the discharge summary to standards. These standards form the most critical elements of the psychiatric record. Adequate documentation provides the means for measuring the degree and intensity of active treatment mechanisms used, and active treatment is the principal concern of the special statutory provisions dealing with psychiatric hospitals. Specifically, the psychiatric evaluation, which contains a mental status examination, forms the foundation of the diagnostic decisionmaking process. The psychiatric evaluation, completed within 60 hours of admission, provides a critical data base upon which decisions regarding specific methods of treatment are based.

The individualized treatment plan is critical because it (1) forces the focus of attention on each patient as a unique individual; (2) provides a systematic approach to care of patients and the documentation of what happens to them; (3) assists staff in their understanding of the patient and his or her needs; and (4) conforms with legislative and judicial concerns that treatment be appropriate and that reimbursement be for active psychiatric treatment rather than custodial care.

Documentation of progress is necessary to determine patients response to treatment planning, treatment, and discharge planning. It serves to apprise all staff about patients progress and any new problems or regression.

Discharge planning and follow-up services are part of the continuum of total care and treatment planning. Appropriate discharge planning assists in reducing unnecessary readmissions.

—Tuberculosis Hospitals (§ 405 1039, proposed § 482.63). Current regulations specify detailed requirements for maintenance of medical records in the tuberculosis hospital. We proposed in the NPRM to limit these requirements to the statutory language. Again, because of the statutory removal of the special provisions on medical records for tuberculosis hospitals, we have deleted all the requirements from these final regulations.

• *Public comments.* No comments were received on the proposed changes to maintenance of medical records by tuberculosis hospitals.

Comment: Commenters objected to the treatment plan requirements for psychiatric hospitals, arguing that they are too detailed and prescriptive. They argued that this approach may be inappropriate to the needs of some patients, and that in some States with cost containment mechanisms, the hospitals will not be allowed to recoup the costs of developing, revising, and reviewing treatment plans. They recommended that the requirement be revised to provide more flexibility, as provided for by JCAH.

Response: We have not made any changes in the regulations because we believe that the plan of treatment requirement is as flexible as it can be and still assure the maintenance of quality care.

Comment: One commenter recommended that we revise the psychiatric provisions of the regulation to require that the attending psychiatrist perform the psychiatric evaluation, provide the admitting diagnosis, sign the discharge summary, and supervise the other staff involved in the patient's care, including any psychologist providing services to the patient.

Response: We have not accepted this recommendation because we do not believe that that level of specificity is necessary to assure health and safety.

We have adopted the proposed regulations without change as final regulations.

Z. Special Requirements for Hospital Providers of Long-Term Care Services (Swing-Beds)

In the 1983 NPRM, we inadvertently omitted provisions currently set forth in § 405.1041, which contains a condition and standards for hospitals that provide posthospital extended care services as swing bed hospitals, in our proposed redesignation of Subpart J of Part 405 to the new Part 482. We have established a new § 482.66 for these provisions. The substance of the condition and standards has not been revised. We have made minor editorial changes and a technical change in the redesignated § 482.66(a)(2) by substituting the term "urbanized" for "urban" to reflect current Census Bureau terminology.

AA. Dental Services (§ 482.12. previously § 405.1031(c))

• *Existing provisions.* Current regulations under § 405.1031(c) contain specific standards on the organization of dental services, staff qualifications and bylaws, and dental records.

• *NPRM provisions.* Doctors of dental surgery or dental medicine were included in the definition of "physician" that we proposed in the NPRM (§ 482.3), and the provisions of the proposed physician care standard (§ 482.12(c)) would have applied to these practitioners and their services. In addition, to the extent these practitioners are granted membership on hospital medical staffs, the proposed condition on medical staff (§ 482.22) would have applied to the practitioners and their services. In view of these requirements, we proposed to delete the separate standard on dental services.

• *Public comments and provisions of final regulations.* No specific comments were received on the deletion of this standard. Although we have taken a different approach to the issues raised by our proposal to define "physician," as explained earlier in this preamble, we wish to note that the governing body condition (specifically § 482.12(a)) requires that the medical staff be accountable to the governing body for the quality of care provided to patients. In addition, the provisions on quality assurance will apply to dental services as well as other patient care services. We believe these provisions will be adequate to ensure that dental services to hospital patients do not result in risk to their health and safety. Therefore, we have not included a separate standard for dental services in these final regulations.

BB. Medical Library (§ 405.1030)

• *Existing provision.* Current regulations require the hospital, as a condition of participation, to maintain a medical library in or adjacent to the facility. The library must contain modern textbooks, journals, and periodicals.

• *NPRM provision.* In the NPRM, we proposed to delete the requirement for a medical library. The proposal was based on our belief that this should not be a Federal requirement, but that each hospital should have the flexibility of deciding if it wants to have a medical library.

• *Public comments.* Many commenters objected to the deletion of the requirement that a hospital have a medical library. They perceived the maintenance of medical information as being crucial to the assurance of quality care. Commenters argued that small and rural hospitals, to which these conditions apply most directly, would be more affected by the deletion as they are more likely to lack professional continuing education programs.

• *Response and provisions of final regulations.* We have not accepted the commenters' recommendation to

maintain this condition. We continue to believe that this should not be a Federal requirement, but that each hospital should have the flexibility of deciding whether to maintain a medical library Medical information impacts on quality of care only if practitioners and staff use it. The mere existence of this information with no parallel requirement for staff to use it gives no assurance that quality of care is enhanced. If the medical staff believes it is essential to quality of care, the staff may pursue the issue with the governing body.

CC. Social Services (§ 405.1034, now § 482 21(b))

• *Existing provisions.* Current regulations specify the standards hospitals must meet if the hospital chooses to provide social work services through an organized distinct social work department. The regulations include details on organization of the social work department, the qualifications of the persons providing social work, and coordination with other departments. The Social Security Act does not require that hospitals provide social services to their patients; they may be provided as an optional service.

• *NPRM provisions.* The NPRM proposed to delete the requirements relating to the optional condition for provision of social services. However, it proposed to mandate under the governing body condition a specific discharge planning requirement, which was a more general requirement under the optional social services condition. We made this proposal because we believe social services is a service that does not require Federal regulation. While social services can be helpful as part of total patient care planning, there is no indication that direct risks to patient health or safety may result in the absence of Federal standards. In fact, we believe that, with the elimination of these prescriptive requirements, hospitals may feel freer to provide social services to their patients

Although there would no longer be a condition on social services under the NPRM, social services would continue to be a covered service under Medicare payment policies.

• *Public comments.* A large number of commenters objected to the deletion of the social service condition. They argued that social services are essential to patient health and safety because of the social worker's role in patient education, counseling, discharge planning, and maximizing the patient's adjustment to illness or disability. One commenter recommended inclusion of a general condition with no specific factors or standards. Many commenters favored including discharge planning requirements and suggested that we require "coordinated" planning. Others suggested that social services personnel be responsible for discharge planning.

• *Response and provisions of the final regulations.* We recognize that social services can make an important contribution to the health and safety of patients, and can enhance the quality of care furnished in an institution. Moreover, we are aware that, in many hospitals, social workers have primary responsibility for ensuring that patients receive appropriate care after they are discharged from the hospital. However, we are also aware that hospitals may choose to make social services available to their patients in different ways, depending on such factors as the patients' needs, the types of nursing and other staff involved in patient care, the hospital's arrangements with social workers in the community, and the availability of qualified social work personnel. We continue to believe that retaining the current prescriptive requirements for the provision of social services would restrict rather than increase hospitals' ability to provide social services to their patients. Therefore, we have not adopted the comments suggesting that we retain the current social services condition.

We have added a new standard to provide for social work services as part of the quality assurance condition (§ 482.21) because social services are so closely linked to the overall quality of care furnished in a hospital. The revised standard focuses on medically-related patient care services. It requires the hospital to have an effective, ongoing discharge planning program that facilitates the provision of followup care. It also requires the hospital to have an ongoing plan, consistent with available community and hospital resources, to provide or make available services related to the medically-related social work, psychological, and educational needs of patients. We have deleted the discharge planning standard proposed under the governing body condition (proposed § 482.12(f)).

IV. Waiver of Proposed Rulemaking to Incorporate Provisions of the Deficit Reduction Act of 1984

We publish rules without a notice of proposed rulemaking when we find that proposed rulemaking is impractical, unnecessary, or contrary to the public interest. Under section III.Y. of this preamble, we have already discussed the deletions we are making in these final Medicare regulations to conform the regulations to the statutory removal of the requirement that psychiatric hospitals must be certified by JCAH and the amendments we are making to the Medicare and Medicaid regulations to conform them to the statutory removal of all references to tuberculosis hospitals and institutions and the special requirements they had to meet. These requirements were removed by sections 2335 and 2340 of the Deficit Reduction Act of 1984 (Pub. L. 98–369, enacted on July 18, 1984).

These changes to our regulations merely conform them to provisions of the statute which are already in effect. The provisions of the law are so specific that they do not allow further interpretation. Delay to issue a proposed rule for these provisions would serve no practical purpose. Therefore, we find good cause for not issuing proposed rulemaking to incorporate the cited provisions of Pub. L. 98–369.

V. Impact Analyses

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that Order. (In addition, section 2 of the Order establishes a general requirement that, among alternative approaches to any given regulatory objective, an agency shall, to the extent permitted by law, choose the approach involving the least cost to society. We have abided by this principle in developing these regulations.)

Under existing regulations, approximately 5,200 of the 6,700 hospitals participating in Medicare and Medicaid are voluntarily accredited by the JCAH or the AOA, and are therefore deemed to meet most of the conditions of participation. Accredited hospitals are generally larger than nonaccredited hospitals. In fact, as of July 1, 1985, 1,082 of the 1,520 nonaccredited hospitals have fewer than 50 beds.

We expect these regulations to reduce costs incurred by nonaccredited hospitals in meeting the conditions of participation. We do not have sufficient information to estimate the amount of the reduction reliably. However, taking into account our experience with existing regulations, and the number and size of the hospitals affected, we believe that these reductions, while significant (see regulatory flexibility discussion below), will not reach $100 million.

We have determined that these final rules do not meet the criteria for a

"major rule" under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

1. *Overview.* In the preamble to the proposed regulations we published on January 4, 1983, we noted that those regulations would, if implemented, have a significant impact on a substantial number of small entities. Therefore, under 5 U.S.C. 603 (enacted by the Regulatory Flexibility Act, Pub. L. 96–354), we were required to prepare and make available for public comment an initial regulatory flexibility analysis. The preamble to the proposed regulations, which discussed in detail the projected impact those regulations would have on small entities, constituted the initial regulatory flexibility analysis. As required by 5 U.S.C. 604, we have now prepared a final regulatory flexibility analysis. This analysis, together with the other parts of this preamble, identifies those provisions of the final regulations that we expect will have the greatest impact on small entities, and discusses the impact we expect each provision to have.

For purposes of the Regulatory Flexibility Act, all hospitals participating in the Medicare program are considered small entities. As a result, this analysis does consider the impact on hospitals in general. However, we have given special attention to hospitals with fewer than 100 beds, since this is a generally accepted size standard in the hospital industry.

One major effect of these regulations will be to increase hospitals' flexibility to determine the most effective ways to comply with the revised conditions of participation. We expect hospitals to develop different approaches to compliance on the basis of the resources of the hospitals, differences among laws in various localities, and other factors. In addition, most of the hospitals subject to these conditions are paid under the prospective payment system for Medicare inpatient hospital services, which establishes incentives for hospitals to reconsider and improve their operations. Thus, while it is clear that the revised regulations will affect hospital costs, we are not able to estimate how each individual hospital will react to the increased flexibility provided by these regulations, or to determine in quantitative terms the effect of the hospitals' reactions. We have, therefore, prepared this analysis in qualitative rather than quantitative terms.

In the discussion below of particular provisions of these final rules, we have tried not to duplicate discussion and analysis from other parts of this preamble unnecessarily. Therefore, at the end of each numbered heading, we give a citation to the main preamble discussion of those provisions, which summarizes the provisions of existing rules and the NPRM proposals and justifies our final decision. The discussion below focuses primarily on comments explicitly related to the impact of the NPRM provisions, and our responses to those comments.

2. *Removal of Credential Requirements for Hospital Personnel (III.B.).* Many commenters opposed our proposal to delete the current credential requirements, and some commenters suggested that we impose even more specific and stringent requirements. In general, the commenters who favored imposition of credential requirements argued that elimination of the credential requirements would:

- Encourage hospitals to employ poorly qualified staff;
- Reduce the quality of patient care; and
- Increase hospital costs in the long run, since lower quality care will increase the length of patient stays.

Many other commenters, however, supported our proposals. In general, these commenters argued that elimination of federally mandated credential requirements would:

- Avoid potential conflict between Federal requirements and those imposed by State and local laws;
- Prevent private credentialing organizations from creating a monopoly with respect to the staffing of certain hospital positions; and
- Allow hospitals greater flexibility to determine personnel criteria.

Provisions of final regulations and projected impact on small entities. In the final regulations, we have:

- For hospital staff who are not doctors of medicine or osteopathy (with certain exceptions, such as staff performing scrub and circulating duties in operating rooms and administering anesthesia), generally avoided the use of personnel qualification requirements based on credentials issued by private professional groups; and
- For directors of hospital services, generally specified qualifications that are stated in terms of medical or osteopathic training and specialization rather than in terms of credentials issued by private professional groups.

See the earlier preamble discussion of the qualifications for directors of inpatient psychiatric services, laboratory services, and psychiatric nursing services for exceptions concerning direction of services. See earlier preamble discussions and sections 13 and 14 of this Impact Analysis for discussion of qualifications of staff performing scrub and circulating duties in operating rooms and administering anesthesia.

We believe the primary impact of these provisions will be to increase individual hospitals' flexibility to set personnel requirements that are appropriate to the needs of their patients, consistent with State and local laws and medical staff requirements, and cost-effective in terms of the types and qualifications of personnel available in each area. We believe this increased flexibility will be especially useful to small hospitals located in rural or other areas in which there may be a shortage of credentialed personnel, since it will permit them to adopt other standards (e.g., experience requirements) to assess the qualifications of employees. We also believe the final regulations will increase competition among potential employees by removing artificial barriers to employment in certain jobs. Thus, it is likely that the final regulations will enable small hospitals to reduce their costs by increasing the number of candidates for each hospital position.

We do not agree with those commenters who stated that removal of credential requirements will decrease the quality of hospital care and thus lead to long-term cost increases. State and local laws, medical staff requirements, and the potential for malpractice liability all provide hospitals with powerful incentives to avoid personnel decisions that reduce the quality of the patient care they provide.

3. *Definition of "Physician" (III.D.).* In the NPRM, we proposed to define "physician" as it is defined in section 1861(r) of the Social Security Act. As noted in our earlier discussion of this issue, this definition sets up the Medicare coverage rules for specified services of certain practitioners (e.g., chiropractors are defined as physicians only with respect to manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist). The definition is not stated in a context that indicates it is to be used to set hospital conditions for patient health and safety. Nevertheless, the term was used in the proposed requirements for the directors of numerous services, for the individual responsible for conduct and organization of the medical staff

with respect to patient admissions, performance of the patient history and physical, orders for services, and the general requirement that the patient be under the care of a physician, and elsewhere throughout the proposed regulations.

Commenters argued that use of the section 1861(r) definition (because it considers chiropractors and optometrists to be physicians within statutory restraints) would decrease overall quality of care and increase utilization of services. They alleged that the categories of practitioners, other than doctors of medicine or osteopathy, that are included in the section 1861(r) definition lack skills in general patient care. These commenters claimed that this would result in increased rates of complications, nosocomial infections, and communicable diseases.

These adverse consequences would result in higher hospital costs through increased lengths of stay, readmissions and higher use of necessary ancillary services and drugs.

They further argued that utilization of days of care and of ancillary services would increase because these other practitioners lack the judgment and skill needed to order services and to analyze test results properly.

Provisions of final regulations and projected impact on small entities. The final regulations delete the definition of the term "physician" and generally avoid use of the term. Instead, they identify the specific type of practitioner who may fulfill each function. Consequently, the practitioner identified for each function has been selected to represent the minimum level of training and skill which we believe is necessary to assure an acceptable level of patient care.

We believe that the selection of the appropriate minimal level of training and skill for each function will avoid confusion that might have occurred had we used the term "physician" as defined in section 1861(r) of the Act. At the same time, we have tried to give hospitals the flexibility they need by designating in each case the *minimum* qualifications appropriate to a function. Since, in the great majority of instances, current hospital and physician authority is already in conformance with these provisions, we do not expect a significant impact from these requirements.

4. *Application of Requirements to Types of Services Rather Than to Departments (II.B.3.).* In general, commenters did not express opposition to this proposal and did not state that the proposal would increase the cost or burden of compliance with the conditions. However, one commenter recommended that we require each type of service to be provided in accordance with written policies and procedures approved by the medical staff and governing body.

Provisions of final regulations and projected impact on small entities. In the final regulations, we have stated the conditions for hospital services in terms of whether services are provided rather than in terms of the way in which their provision is organized. We have taken this approach to ensure that patients receive uniform levels of protection from health and safety hazards, and to avoid any intrusive requirement on how hospitals organize the delivery of services.

We did not adopt the comment suggesting that services be provided only in accordance with written policies and procedures, since we believe that doing so would impose a burdensome paperwork requirement on hospitals without resulting in any corresponding benefit to patient health and safety.

We believe the impact of this feature of the final regulations will be to increase hospitals' flexibility to provide services in the way that is best adapted to their organizational structures, their patients' needs, and other factors that affect their operations. We expect this increased flexibility to result in reduced costs for hospitals, since each hospital will have greater freedom to provide services in the most cost-effective manner.

5. *Removal of Prescriptive Administrative Requirements (III.F. and H.).* The current regulations at § 405.1021 (governing body) and § 405.1023 (medical staff) contain certain prescriptive administrative requirements, such as those that deal with mandatory committees and committee meetings. In the NPRM, we proposed to remove most of these prescriptive administrative requirements, and to replace them with language stated in terms of expected outcomes. In general, commenters did not state that our proposals would have an adverse impact on hospitals or their patients. However, some commenters recommended that we continue to require a joint committee to allow more formal liaison between hospital medical staff and administrators. These commenters argued that formalized liaison is needed to ensure proper coordination of patient care activities.

Provisions of final regulations and projected impact on small entities. In the final regulations, we have continued to use language stated in terms of desired outcomes rather than prescriptive administrative requirements to help ensure proper administration. In particular, we have included a requirement that the medical staff be accountable to the governing body for the quality of patient care. We believe this requirement will be sufficient to ensure proper coordination of patient care services.

We believe the primary effect of these provisions of the revised regulations will be to permit hospitals and their medical staffs to develop the administrative mechanisms and procedures that are best suited to the size of each hospital, the composition of its medical staff, and the type of services its patients require. We expect the final provisions to reduce hospital administrative costs and permit administrators and medical staff members to operate more efficiently.

6. *Removal of Specific Requirements Relating to Physical Plant, Dental Services, Social Work Departments, and Medical Libraries (III.P, III.AA., III.BB., and III.CC.).* As explained above, in the NPRM we proposed to delete current regulations containing specific standards for physical plant and dental services (§§ 405.1021(i) and 405.1031(c)), and conditions for medical libraries and social work departments (§§ 405.1030 and 405.1034).

We did not receive any comments relating specifically to the potential impact of deleting the standards for physical plant and dental services. With respect to our proposals to delete the conditions on social work departments and medical libraries, we received a large number of comments. These comments are discussed in detail earlier in this preamble. With respect to the potential impact of our proposals, commenters raised the following issues.

- *Social work departments.* Many commenters state that the condition on social work departments should not be deleted because social services are essential to patient health and safety. These commenters stated that social workers play an important role in patient education, counseling, discharge planning, and maximizing patients adjustments to illness or disability. These commenters believe that deleting the condition will discourage hospitals from providing effective, professionally managed social services.
- *Medical library.* Many commenters stated that maintenance of medical information is crucial to the provision of quality care, and that deleting the medical library condition would discourage hospitals from maintaining this information. Some commenters stated that this effect would be most acute in small and rural hospitals, since those hospitals are most likely to lack

professional continuing education programs.

Provisions of final regulations and projected impact on small entities. In the final regulations, we have maintained the approach taken in the NPRM with regard to specific requirements on physical plant, dental services, and medical libraries. With regard to social services, we have not adopted the comments recommending that we retain the current social services requirements. However, we have added a provision under the new condition on quality assurance (§ 482.21) that will require hospitals to provide for social work services as part of their quality assurance efforts.

We expect that removal of the current conditions on medical libraries and social services will increase hospitals' flexibility to determine the most effective and efficient ways of making medical information available to their employees and their medical staff members, and making social services available to their patients. For example, some small hospitals may find it more cost effective to eliminate their medical library or to maintain collections of medical books, periodicals, and other information at various locations in the hospital, rather than to maintain a central medical library. Also, small hospitals may choose to make social services available to their patients in various ways, based on factors such as patients' needs, the types of nursing and other staff involved in patient care, the availability of social work personnel in their communities, and the availability of social services from agencies in those communities.

We do not expect the removal of the physical plant standard to have a significant impact on hospitals, since this amounts only to the elimination of a duplicative requirement already found in the condition on physical environment. In the case of dental services, we expect the primary impact of the final regulations to be an increase in hospitals' flexibility to set, in cooperation with their medical staffs, standards appropriate to their particular situations. This increased flexibility should produce corresponding cost savings.

7. *Elevation from Standards to Conditions of Requirements on Infection Control, Surgery, Anesthesia, and Rehabilitation (III.Q., III.R., III.S., and III.W.).* In the NPRM, we proposed to delete certain overly prescriptive requirements from these provisions, and to elevate each of them to the level of a condition. We did not receive any public comments that dealt specifically with the potential impact of the proposals on infection control, anesthesia, or rehabilitation. With respect to the proposed condition on surgery, the comments related to impact dealt almost exclusively with the provision that would require circulating duties in an operating room to be performed by a registered nurse, or by a surgical technologist or licensed practical nurse under the direct supervision of a registered nurse. Since these comments were not related to the elevation of the surgical standard to a condition, we have discussed them separately below.

Provisions of final regulations and projected impact on small entities. In these final regulations, we have retained separate conditions for infection control, surgery, anesthesia, and rehabilitation.

Under Medicare, a hospital's participation may not be terminated because of its failure to be in substantial compliance with a particular standard. However, termination may result if a hospital is not in substantial compliance with a condition. Our decision to elevate certain requirements to the level of conditions will, therefore, increase hospitals' accountability for compliance with these requirements and is likely to increase the compliance costs the hospitals incur. We expect that these increased compliance costs will be offset, at least to some extent, by the increased flexibility provided by our removal of overly prescriptive requirements from the regulations. (Under the condition on infection control, for example, individuals could perform functions for which the current regulations require committees.) Thus, while we expect that some small hospitals will incur increased compliance costs, we do not believe the extent of the impact on these hospitals will be significant.

8. *Addition of Conditions on Quality Assurance, Respiratory Care, and Nuclear Medicine (III.G., III.X., and III.T.).* We did not receive any comments that dealt specifically with the impact of the NPRM proposal to create new conditions for quality assurance and nuclear medicine. We did receive comments on the impact of the NPRM proposal to add the new condition on respiratory care. Some comments stated that respiratory care services create a risk for patients, and may be overutilized. Excessive utilization of these services would, of course, increase hospital costs. These commenters suggested that we permit the services to be ordered only by doctors of medicine or osteopathy, and that only these practitioners be permitted to direct respiratory care services.

Provisions of final regulations and projected impact on small entities.

• *Quality assurance.* In the final regulations we have made clarifying changes in the proposed condition and have expanded it to include general requirements relating to social services and discharge planning. Complying with the new quality assurance condition will impose additional costs on hospitals (e.g., costs of preparing a quality assurance plan). However, these additional costs may be largely offset by the removal of other, more prescriptive requirements that were intended to assure quality care. As a result, we do not expect the new condition to have a significant impact on hospitals.

• *Respiratory care.* We have adopted the recommendations of the commenters who believe that these services should be ordered and directed only by doctors of medicine or osteopathy. We are not requiring full-time physician direction, hence, we do not expect small hospitals to incur higher costs for respiratory care services because of this requirement. We believe that savings will result from avoiding excessive utilization of respiratory care services which might occur if doctors of medicine or osteopathy did not order the services.

• *Nuclear medicine.* We received comments suggesting that we incorporate by reference certain requirements and standards of the Nuclear Regulatory Commission and the National Council on Radiation Protection. We also received comments suggesting that we permit nuclear medicine services to be ordered only by a doctor of medicine or osteopathy. We have not adopted these specific recommendations in the final regulations. However, hospitals that use nuclear materials are already tightly regulated by the Nuclear Regulatory Commission and by State laws. Moreover, nuclear medicine programs typically are concentrated in large rather than small hospitals. Thus, we do not expect the final condition on nuclear medicine services to have a significant impact on small hospitals.

9. *Application of Special Conditions for Psychiatric Hospitals to Psychiatric Units of General Hospitals (III.Y.1.).* In the NPRM, we proposed to simplify the special conditions for psychiatric hospitals, and invited comment on whether those conditions should be applied to psychiatric units of general hospitals. Some commenters favored application of the special psychiatric conditions to psychiatric units of general hospitals, while others opposed this approach. Many of the commenters who opposed application of the special

conditions to general hospital psychiatric units stated that applying these conditions would impose an additional burden on the hospitals, and would not be necessary to protect patients health and safety.

Provisions of final regulations and projected impact on small entities. The final regulations do not require psychiatric units of general hospitals to meet the special psychiatric conditions. These special staffing and medical records requirements would have increased burden and costs for hospitals with psychiatric units. As explained earlier, hospital psychiatric units that meet certain requirements similar to these, included in 42 CFR 412.27, may qualify for exclusion from the prospective payment system. However, we do not believe these requirements are necessary for all hospital psychiatric units participating in the Medicare program. Therefore, we are leaving hospitals the flexibility to determine whether it would be advantageous for them to have their units excluded from prospective payment. If a hospital unit is sufficiently similar to psychiatric hospitals to be excluded, the requirements are appropriate. Conversely, if a psychiatric unit is not different enough from other hospital operations to justify exclusion, it would be inappropriate to impose the special conditions.

10. *Revisions to Utilization Review Requirements (III.O.).* In the NPRM, we proposed to eliminate the most prescriptive and detailed provisions of the regulations in effect when the NPRM was published, and to replace them with language from the statute. Commenters expressed differing opinions with respect to the procedure to be followed before the utilization review committee decides that a continued stay is not medically necessary. Some commenters stated that giving the attending physician the opportunity to present his or her opinion before making a determination would induce the physician to order more services to justify a continued stay. This would unnecessarily increase hospital costs. However, another commenter recommended that the patient as well as the attending physician be notified before a determination is made. This commenter reasoned that any additional cost associated with notification of the patient would be warranted, since it would help prevent premature discharges.

Some commenters recommended that we specify that decisions regarding admissions or continued stay be made only by a staff committee consisting of two or more doctors of medicine or osteopathy. This would increase hospital costs, because doctors of medicine or osteopathy generally receive higher levels of compensation than other practitioners. Other commenters, however, suggested that we enable hospitals to minimize the cost of compliance with the utilization review condition by permitting a subgroup of the utilization review committee, or an individual designee, to conduct admission or continued stay reviews.

Commenters also expressed different views regarding the general usefulness of the utilization review condition. Some commenters stated that removing all utilization review requirements from the regulations would be more cost-effective, since hospitals could then integrate their utilization review activities with their overall quality assurance efforts. Other commenters, however, stated that more prescriptive requirements would provide greater protection against excessive utilization than the requirements in the NPRM, and therefore concluded that use of more prescriptive requirements would result in a net reduction in hospital costs.

Provisions of final regulations and projected impact on small entities. The provisions of the final regulations are described earlier in this preamble. As we noted in that discussion, our primary objective in developing the final provisions has been to give hospitals as much flexibility as possible, subject to the limitations of section 1861(k), to conduct utilization review.

Since these final utilization review provisions are much less prescriptive than those previously under § 405.1035, it might appear that they would reduce hospital costs. However, we were enjoined from implementing many of the previous provisions, and those provisions therefore did not have any actual cost impact. Moreover, the utilization review requirements will not apply to any hospital for which a PRO is performing review activities to determine whether inpatient hospital services are reasonable and medically necessary and are furnished at the appropriate level of care. Since all hospitals are now required to have contracts with PROs for the performance of such reviews, it is likely that the new utilization review provisions will apply only in a very few cases. In these cases, we expect that the costs of compliance with utilization review procedures would be offset largely or entirely by the reduction or elimination of excessive utilization that we expect to result from those procedures. On balance, it is likely that efficiently conducted utilization review will reduce rather than increase hospital costs.

11. *Reduction of Medical Record Requirements (III.J.).* Comments on the impact of the proposed change to the staffing requirement are included under the discussion on credentials (IV.B.2).

The only other comments related to impact were on the expansion of the timeframes for completion of the physical examination and history. Commenters argued that allowing an extra 12 hours for the physical and history would slow treatment, cause increased costs, and result in a deterioration in the quality of care. Commenters also argued that expansion of the timeframe, for record completion, from 15 to 30 days post-discharge, would adversely impact post hospital care and slow cash flow, since record completion is necessary before billing.

Provisions of final regulations and projected impact on small entities. The final regulations delete the detail on indexing, filing, staffing, and centralization of records. This added flexibility should permit more efficient operation of the service.

The final regulations maintain the current timeframe, 48 hours, for the conduct of a history and physical. This should result in no impact.

The final regulations expand the timeframe for completion of the record from 15 to 30 days, as proposed. We believe that post discharge care should not suffer since such care is usually arranged before the 15 day limit anyway. Furthermore, any hospital which chooses is free to retain the 15 day requirement or impose a more stringent timeframe on its staff in order to facilitate its billing and cash flow.

12. *Revision of Provisions Regarding Administration of Drugs and Acceptance of Oral Orders (III.I.).* Many commenters, primarily respiratory therapists, objected to the proposed rule. Commenters indicated that individuals other than those on the lists have administered drugs and accepted oral orders for many years. They noted that JCAH has recognized this for some time as accepted practice and that if the NPRM were finalized without change numerous specialized therapists and technicians (e.g. respiratory therapists, cardiac catheterization technicians, radiology technicians, etc.) would be precluded from an appropriate function. They argued that these individuals' jobs would be jeopardized, that quality of care would deteriorate, and that the cost of care would rise.

Provisions of final regulations and projected impact on small entities. The final regulations leave the decision of who may administer drugs and accept oral orders to the medical staff rules and regulations, in accordance with State law. Consequently, there should be no impact on current practice created by release of the final regulations.

13. *Operating Room Scrub and Circulating Responsibilities (III.R.).* The 1983 NPRM provided that surgical technologists and licensed practical nurses (LPNs) could scrub under registered nurse supervision and could perform circulating duties under direct registered nurse supervision. Many commenters believe that this regulation will have a serious negative impact on the use of surgical technologists and will result in higher hospital costs as surgical technologists and LPNs are replaced by registered nurses. They stated that the release of a 1980 NPRM, which would not have required registered nurse supervision or presence in the operating room, prompted many hospitals to allow surgical technologists and LPNs to scrub and circulate without registered nurse oversight. Consequently, although the 1983 NPRM would have expanded the role of surgical technologists and LPNs permitted under regulations, by allowing them to perform circulating functions under the direct supervision of a registered nurse, commenters argued that it, in fact, would severely restrict their functions as compared with current practice.

Provisions of final regulations and projected impact on small entities. As discussed previously in this preamble, these regulations, in response to comments, will permit surgical technologists and LPNs to assist with circulating duties if certain conditions are met. This change further expands, rather than restricts, the role of surgical technologists and LPNs. The change is not expected to have a significant detrimental impact on surgical technologists and LPNs. Further, it will ensure the ready availability of a registered nurse to respond to emergencies. We do not believe this will result in any significant changes in current practice or in inappropriate restriction of functions.

14. *Administration of Anesthesia (III.S.).* The NPRM proposed to permit anesthesia assistants (properly called anesthesiology assistants) to administer anesthesia under the same conditions as CRNAs. Several commenters asserted that permitting these assistants to perform this function would have an adverse impact on patient care.

Provisions of final regulations and projected impact on small entities. As discussed earlier, we have retained anesthesiology assistants in the list of individuals who may administer anesthesia in hospitals. However, we have revised the qualifications criteria and required that anesthesiology assistants be under the direct supervision of an anesthesiologist who is physically present. There is currently at least one university that trains these personnel and the revised qualifications criteria are consistent with that university's program. Very few of the hospitals affected by these conditions would be burdened by these requirements, since there are relatively few active anesthesiology assistants, and the number of individuals in this health care training area has diminished. Consequently, although there will be some burden resulting from the credential and supervision requirements it will be confined to a few hospitals and localities, and will not be substantial.

15. *Specialty Hospitals (III.Y.).* As discussed above, we have amended the final requirements for specialty hospitals to conform to sections 2335 and 2340 of Pub. L. 98–369. The elimination of special requirements for tuberculosis hospitals will have no impact, since there are no longer any hospitals certified under those requirements. We expect that the deletion of the requirement that psychiatric hospitals be accredited by JCAH will also have a negligible impact. For the most part, psychiatric hospitals will choose to remain accredited. In any event, a hospital will have no additional burden imposed on it by this change.

C. Paperwork Reduction Act of 1980

Sections 482.12 (d), (e), and (f), 482.21, 482.22(c), 482.24 (b) and (c), 482.25(a)(3), 482.26(d), 482.27(a) (2), (3), and (4)(ii), 482.30 (c)(1) and (d)(3), 482.41(b)(3), 482.42(a)(2), 482.51 (a)(4) and (b) (1) and (6), 482.52(b), 482.53(d), 482.56(b), 482.57(b)(1), 482. 60(c), 482. 61. (a) , (b), (c), (d), and (e), and 482.62(a) of these regulations contain information collection requirements that are subject to review by the Executive Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. We are submitting these requirements to OMB for approval. We will publish a notice in the **Federal Register** when approval is obtained.

VI. REDESIGNATION TABLE

Old Part 405	New Part 482
405.1011	482.2
405.1020	482.11
405.1021(a)–(d)	482.12
405.1021(e)	482.12(a)
405.1021(f) & (g)	482.12(b)
405.1021(h)	482.12(c)
405.1021(i)	482.41
405.1021(j)	482.12(d)
405.1022	482.41 and 482.42
405.1023	482.22
405.1024 except (d)	482.23
405.1024(d)	482.51
405.1025	482.28
405.1026	482.24
405.1027	482.25
405.1028	482.27
405.1029	482.26
405.1030	Deleted
405.1031(a)	482.51
405.1031(b)	482.52
405.1031(c)	Deleted as duplicative of 482.22
405.1031(d)	482.56
405.1032	482.54
405.1033	482.12(f)
405.1034	Deleted. Provision included as part of 482.21(b)
405.1035	482.30
405.1036	482.60
405.1037	482.61
405.1038	482.62
405.1039	Deleted. Provisions removed by law.
405.1040	Deleted. Provisions removed by law.
405.1041	482.66
405.1042	482.30

VII. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Health facilities, Medicare.

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 417

Administrative practice and procedures, Health maintenance organization (HMO), Medicare.

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR Part 456

Administrative practice and procedure, Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 482

Administrative practice and procedure, Certification of compliance, Contracts (Agreements), Health care, Health facilities, Health professions, Hospitals, Laboratories, Medicare, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 489

Clinics, Health care, Health facilities, Medicare, Provider agreements, Rural health clinics, Termination procedures.

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Chapter IV is amended as follows:

A. The table of contents to Chapter IV is amended by adding a new Part 482 to Subchapter E to read as follows:

* * * * *

SUBCHAPTER E-STANDARDS AND CERTIFICATION

* * * * *

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

* * * * *

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

B. Part 405 is amended as follows:

1. The table of contents is amended by removing and reserving Subpart J to read as follows:

Subpart J—[Reserved].

* * * * *

2. The authority citation of Subpart A continues to read as follows:

Authority: Secs. 1102, 1814, 1815, 1861, 1866(d), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395g, 1395x, 1395cc(d), and 1395hh).

§ 405.162 [Amended]

3–6. In Subpart A, § 405.162, the reference in paragraph (a) to "§ 405.1035 and 405.1042" is changed to read "§ 482.30 of this chapter".

7. The authority citation of Subpart B continues to read as follows:

Authority: Secs. 1102, 1831–1833, 1835–1843, 1861, 1862, 1866, and 1871 of the Social Security Act, 42 U.S.C. 1302, 1395j–1395l, 1395m–1395v, 1395x, 1395y, 1395cc, and 1395hh, unless otherwise noted.

§ 405.231 [Amended]

8. In Subpart B, § 405.231, under paragraph (l)(1), the reference to "Subparts, J, K, and L of this part" is changed to "Subparts K and L of this part and Part 482 of this chapter"; under paragraph (l)(3), the reference to "Subparts J and K of this part" is changed to read "Subpart K of this part and Part 482 of this chapter"; under paragraph (m)(1), the reference to "Subparts J, K, and L of this part" is changed to read "Subparts K and L of this part and Part 482 of this chapter"; and under paragraph (m)(2), the reference to "Subparts J and K of this part" is changed to read "Subpart K of this part and Part 482 of this chapter".

§ 405.232 [Amended]

9. In Subpart B, § 405.232, under paragraph (f), the reference to "§ 405.1028 or § 405.1029" is changed to read "§ 482.26 or § 482.27".

10–12 The authority citation of Subpart D continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 13951(l), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

§ 405.434 [Amended]

13. In Subpart D, § 405.434, under paragraph (b), the reference to "§ 405.125" is changed to read "§ 409.20" and the reference to "§ 405.1041" is changed to read "§ 482.66 of this chapter".

14. In Subpart D, § 405.453, under paragraph (d)(5)(i)(A), the reference to "§ 405.1041" is changed to read "§ 482.66".

15. The authority citation of Subpart J is removed.

16. The content of Subpart J (§§ 405.1011 through 405.1042) is removed and reserved, to read as follows:

Subpart J [Reserved. See Part 482.]

17. The authority citation of Subpart K continues to read as follows:

Authority: Secs. 1102, 1814, 1832, 1833, 1861, 1863, 1865, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395k, 1395l, 1395x, 1395z, 1395bb, 1395cc, and 1395hh).

§ 405.110 [Amended]

18. In Subpart K, § 405.1101, paragraph (a)(3), the reference to "405.1021(f)" is changed to read "§ 482.12(b)".

§ 405.1128 [Amended]

19. In Subpart K, § 405.1128, the reference in paragraph (a) to "§§ 405.1028 and 405.1029" is changed to read "§§ 482.26 and 482.27 of this chapter", and the reference in paragraph (b) to "§ 405.1028(j)" is changed to read "482.27(d) of this chapter" and the reference to "§ 405.1028(j)(1), (3), (4), (6), and (9)" is changed to read "§ 482.27(d)(1), (2), (3), and (6) of this chapter".

20. The authority citation of Subpart O continues to read as follows:

Authority: Secs. 1102, 1866, 1869, 1871, 1872, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395cc, 1395ff, 1395hh, 1395ii, and 1395ww).

§§ 405.1501 and 405.1502 [Amended]

21. In Subpart O, §§ 405.1501(a)(1) and 405.1502(a), the reference to "Subparts J, K, L, or Q of this Part 405" and "Subparts J, K, L, or Q of this part" are changed to read "Subparts K, L, or Q of this part and Part 482 of this chapter". In § 405.1505(b), the reference to "Subparts J, K, or L of this part" is changed to read "Subpart K or L of this part and Part 482 of this chapter".

22. The authority citation of Subpart P continues to read as follows:

Authority: Secs. 1102, 1814, 1835, 1871, and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395n, 1395hh, and 1395tt), unless otherwise noted.

§ 405.1627 [Amended]

23. In Subpart P, § 405.1627, the section heading is amended by removing the phrase "or tuberculosis".

405.1629 [Amended]

24. In Subpart P, § 405.1629, the section heading is amended by removing the phrase "tuberculosis hospital services and inpatient"; the undesignated introductory paragraph is amended by removing "and tuberculosis" and "tuberculosis and" wherever they appear; and paragraphs (c) and (d) are removed and reserved.

§ 405.1630 [Amended]

25–26. In Subpart P, § 405.1630, paragraph (b)(1) is amended by removing the phrase "tuberculosis and".

27. The authority citation of Subpart S continues to read as follows:

Authority: Secs. 1102, 1814, 1861, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395hh) unless otherwise noted.

§ 405.1901 [Amended]

28. In Subpart S, § 405.1901, the reference in paragraph (b)(2) to "Subparts J, K, L, M, N, Q, or U of this part, Subpart C of Part 418, or Subpart A of Part 491" is changed to read "Subparts K, L, M, N, Q, or U of this part, Subpart C of Part 418, Part 482, or Subpart A of Part 481 of this chapter". The reference in paragraph (d)(1) to "Subpart F of 42 CFR Part 482" is changed to read "§ 482.30 of this chapter". The text of paragraph (d)(2) is revised to read "(2) The additional special staffing and medical records

requirements that are considered necessary for the provision of active treatment in psychiatric hospitals (section 1861(f) of the Act) and implementing regulations; and".

§ 405.1910 [Amended]

29. In Subpart S, § 405.1910, the reference in paragraphs (a) and (d) to "Subpart J of this part" is changed to read "Part 482 of this chapter".

§ 405.1913 [Amended]

30. In Subpart S, § 405.1913, the reference in paragraph (b) to "§ 405.1035(f) and (g) and § 405.1137(a)" is changed to read "§ 405.1137(a) and § 482.30 of this chapter"; and the five references in paragraphs (b), (c), (d), and (g) to "§ 405.1035 or § 405.1137" are changed to read "§ 405.1137 or § 482.30 of this chapter".

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

C. Part 412 is amended as follows:

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ww).

§ 412.23 [Amended]

2. In § 412.23, paragraph (a)(2), the cross-reference to "Subpart J of Part 405 of this chapter" is changed to read "Part 482 of this chapter".

PART 416—AMBULATORY SURGICAL SERVICES

D. Part 416 is amended as follows:

1. The authority citation of Part 416 continues to read as follows:

Authority: Secs. 1102, 1832(a)(2), 1833, 1863, and 1864 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 13951, 1395z, and 1395aa).

§ 416.41 [Amended]

2. In § 416.41, the reference to "§ 405.1011 of this chapter" is changed to read "§ 482.2 of this chapter".

PART 417—HEALTH MAINTENANCE ORGANIZATONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

E. Part 417 is amended as follows:

1. The authority citation of Part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1361(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act as amended (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); section 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); and section 1301 of the Public Health Service Act (42 U.S.C. 300e).)

§ 417.207 [Amended]

2. In Subpart B, § 417.207, the reference in paragraph (a) to "Subparts J, K, L, and Q, of this part" is changed to read "Subparts K, L, and Q of this part and Part 482 of this chapter".

PART 440—SERVICES: GENERAL PROVISIONS

F. Part 440 is amended as follows:

1. The authority statement for Part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 440.1 [Amended]

2. In § 440.1, the reference to "§§ 405.1041 and 447.280 of this chapter" is changed to "§§ 447.280 and 482.66 of this chapter".

§ 440.10 [Amended]

3. In § 440.10, the section heading is amended by removing the phrase "tuberculosis or"; and paragraph (a)(3) is amended by removing the phrase "tuberculosis or" and changing the reference "§ 405.1035" to "§ 482.30".

§ 440.40 [Amended]

4. In § 440.40, the section heading and paragraph (a) are amended by removing the phrase "tuberculosis or".

5. Section 440.140 is revised to read as follows:

§ 440.140 Inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals age 65 or older in institutions for mental diseases.

(a) *Inpatient hospital services.* (1) "Inpatient hospital services for individuals age 65 or older in institutions for mental diseases" means services provided under the direction of a physician for the care and treatment of recipients in an institution for mental diseases that meets the requirements specified in § 482.60(b), (c), and (e) of this chapter and—

(i) Meets the requirements for utilization review in § 482.30(a), (b), (d), and (e) of this chapter; or

(ii) Has been granted a waiver of those utilization review requirements under section 1903(i)(4) and Subpart H of Part 456 of this subchapter.

(2) "Institution for mental diseases" means an institution that is primarily engaged in providing diagnosis, treatment, or care of individuals with mental diseases, including medical care, nursing care, and related services.

(b) *Skilled nursing facility services.* "Skilled nursing facility services for individuals age 65 or older in institutions for mental diseases" means skilled nursing facility services as defined in § 440.40 that are provided in institutions for mental diseases, as defined in paragraph (a) of this section.

(c) *Intermediate care facility services.* "Intermediate care facility services for individuals age 65 or older in institutions for mental diseases" means intermediate care facility services as defined in § 440.150 of this subpart, that are provided to recipients who are—

(1) Determined under §§ 456.360–456.372 of this subchapter to be in need of services; and

(2) In institutions for mental diseases, as defined in paragraph (a) of this section.

§ 440.150 [Amended]

6. In § 440.150, the section heading and paragraph (a) are amended by removing the phrase "tuberculosis or".

§ 440.250 [Amended]

7. In § 440.250, paragraph (d) is amended by removing the phrase "tuberculosis or".

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

G. Part 441 is amended as follows:

1. The authority citation of Part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

§ 441.11 [Amended]

2. In § 441.11, paragraph (b)(3) is revised to read "(3) For a facility or program providing inpatient psychiatric service for individuals under age 21, the termination by the agency of its provider agreement."; and in paragraphs (c)(2), (4), and (6), the phrase "tuberculosis or" is removed.

§ 441.13 [Amended]

3. In § 441.13, paragraph (a)(2) is amended by removing the phrase "tuberculosis or".

§ 441.40 [Amended]

4. In § 441.40, the reference to "§ 405.1011" is changed to read "§ 482.2".

PART 456—UTILIZATION CONTROL

H. Part 456 is amended as follows:

1. The authority citation of Part 456 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 456.51 [Amended]

2. In § 456.51, paragraph (a)(1) is amended by removing the phrase "tuberculosis or"; and paragraph (a)(2) is removed and reserved.

§ 456.501 [Amended]

3. In § 456.501, under paragraph (c), the reference to "§§ 405.1035, 405.1036, and 405.1137 of this chapter" is changed to read "§§ 405.1137, 482.30, and 482.60 of this chapter".

I. A new Part 482 is added to Subchapter E to read as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

Subpart A—General Provisions

Sec.

482.1 Basis and scope.
482.2 Provision of emergency services by nonparticipating hospitals.

Subpart B—Administration.

482.11 Condition of participation: Compliance with Federal, State and local laws.
482.12 Condition of participation: Governing body.

Subpart C—Basic Hospital Functions

482.21 Condition of participation: Quality assurance.
482.22 Condition of participation: Medical staff.
482.23 Condition of participation: Nursing services.
482.24 Condition of participation: Medical record services.
482.25 Condition of participation: Pharmaceutical services.
482.26 Condition of participation: Radiologic services.
482.27 Condition of participation: Laboratory services.
482.28 Condition of participation: Food and dietetic services.
482.30 Condition of participation: Utilization review.
482.41 Condition of participation: Physical environment.
482.42 Condition of participation: Infection control.

Subpart D—Optional Hospital Services

482.51 Condition of participation: Surgical services.
482.52 Condition of participation: Anesthesia services.
482.53 Condition of participation: Nuclear medicine services.
482.54 Condition of participation: Outpatient services.
482.55 Condition of participation: Emergency services.
482.56 Condition of participation: Rehabilitation services.
482.57 Condition of participation: Respiratory care services.

Subpart E—Requirements for Specialty Hospitals.

482.60 Special provisions applying to psychiatric hospitals.
482.61 Condition of participation: Special medical record requirements for psychiatric hospitals.
482.62 Condition of participation: Special staff requirements for psychiatric hospitals.
482.66 Condition of participation: Special requirements for hospital providers of long-term care service ("swing-beds")

Authority: Secs. 1102, 1814(a)(7), 1861 (e), (f), (k), (r), (v)(1)(G), and (z), 1864, 1871, 1883, 1886, and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1395f(a)(7), 1395x (e), (f), (k), (r), (v)(1)(G), and (z), 1395aa, 1395hh, 1395tt, 1395ww, and 1396d(a)).

Subpart A—General Provisions

§ 482.1 Basis and scope.

(a) *Basis in legislation.* (1) Section 1861(e) of the Act provides that—

(i) Hospitals participating in Medicare must meet certain specified requirements; and

(ii) The Secretary may impose additional requirements if they are found necessary in the interest of the health and safety of the individuals who are furnished services in hospitals.

(2) Section 1861(f) of the Act provides that an institution participating in Medicare as a psychiatric hospital must meet certain specified requirements imposed on hospitals under section 1861(e), must be primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons, must maintain clinical records and other records that the Secretary finds necessary, and must meet staffing requirements that the Secretary finds necessary to carry out an active program of treatment for individuals who are furnished services in the hospital. A distinct part of an institution can participate as a psychiatric hospital if the institution meets the specified 1861(e) requirements and is primarily engaged in providing psychiatric services, and if the distinct part meets the records and staffing requirements that the Secretary finds necessary.

(3) Section 1905(a) of the Act provides that "medical assistance" (Medicaid) payments may be applied to various hospital services. Regulations interpreting those provisions specify that hospitals receiving payment under Medicaid must meet the requirements for participation in Medicare (except in the case of medical supervision of nurse-midwife services. See §§440.10 and 440.165 of this chpater.).

(b) *Scope.* Except as provided in Subpart S of Part 405 of this chapter, the provisions of this part serve as the basis of survey activities for the purpose of determining whether a hospital qualifies for a provider agreement under Medicare and Medicaid.

§ 482.2 Provision of emergency services by nonparticipating hospitals.

(a) The services of an institution that does not have an agreement to participate in the Medicare program may, nevertheless, be reimbursed under the program if—

(1) The services are emergency services; and

(2) The institution meets the requirements of section 1861(e) (1) through (5) and (7) of the Act. See 42 CFR 405.152, 405.157, and 405.158 for provisions regarding emergency services.

(b) Secton 440.170(e) of this chapter defines emergency hospital services for purposes of Medicaid reimbursement.

Subpart B—Administration

§ 482.11 Condition of participation: Compliance with Federal, State and local laws.

(a) The hospital must be in compliance with applicable Federal laws related to the health and safety of patients.

(b) The hospital must be—

(1) Licensed; or

(2) Approved as meeting standards for licensing established by the agency of the State or locality responsible for licensing hospitals.

(c) The hospital must assure that personnel are licensed or meet other applicable standards that are required by State or local laws.

§ 482.12 Condition of participation: Governing body.

The hospital must have an effective governing body legally responsible for the conduct of the hospital as an institution. However, if a hospital does not have an organized governing body, the persons legally responsible for the conduct of the hospital must carry out the functions specified in this Part that pertain to the governing body.

(a) *Standard: Medical staff.* The governing body must:

(1) Determine, in accordance with State law, which categories of partitioners are eligible candidates for appointment to the medical staff;

(2) Appoint members of the medical staff after considering the recommendations of the existing members of the medical staff;

(3) Assure that the medical staff has bylaws;

(4) Approve medical staff bylaws and other medical staff rules and regulations;

(5) Ensure that the medical staff is accountable to the governing body for the quality of care provided to patients;

(6) Ensure the criteria for selection are individual character, competence, training, experience, and judgment; and

(7) Ensure that under no circumstances is the accordance of staff

membership or professional privileges in the hospital dependent solely upon certification, fellowship, or membership in a specialty body or society.

(b) *Standard: Chief executive officer.* The governing body must appoint a chief executive officer who is responsible for managing the hospital.

(c) *Standard: Care of patients.* In accordance with hospital policy, the governing body must ensure that the following requirements are met:

(1) Every patient is under the care of:

(i) A doctor of medicine or osteopathy (This provision is not to be construed to limit the authority of a doctor of medicine or osteopathy to delegate tasks to other qualified health care personnel to the extent recognized under State law or a State's regulatory mechanism.);

(ii) A doctor of dental surgery or dental medicine who is legally authorized to practice dentistry by the State and who is acting within the scope of his or her license;

(iii) A doctor of podiatric medicine, but only with respect to functions which he or she is legally authorized by the State to perform;

(iv) A doctor of optometry who is legally authorized to practice optometry by the State, but only with respect to services related to the condition of aphakia; or

(v) A chiropractor who is licensed by the State or legally authorized to perform the services of a chiropractor, but only with respect to treatment by means of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist.

(2) Patients are admitted to the hospital only on the recommendation of a licensed practitioner permitted by the State to admit patients to a hospital. If a patient is admitted by a practitioner not specified in paragraph (c)(1) of this section, the patient is under the care of a doctor of medicine or osteopathy.

(3) A doctor of medicine or osteopathy is on duty or on call at all times.

(4) A doctor of medicine or osteopathy is responsible for the care of each patient with respect to any medical or psychiatric problem that is present on admission or develops during hospitalization and that is not specifically within the scope of practice, as defined by the medical staff and permitted by State law and as limited by paragraphs (c)(1) (iv) and (v) of this section, of any of the practitioners specified in paragraphs (c)(1) (ii) through (v) of this section.

(d) *Standard: Institutional plan and budget.* The institution must have an overall institutional plan that meets the following conditions:

(1) The plan must include an annual operating budget that is prepared according to generally accepted accounting principles.

(2) The budget must include all anticipated income and expenses. This provision does not require that the budget identify item by item the components of each anticipated income or expense.

(3) The plan must provide for capital expenditures for at least a 3-year period, including the year in which the operating budget specified in paragraph (d)(2) of this section is applicable.

(4) The plan must include and identify in detail the objective of, and the anticipated sources of financing for, each anticipated capital expenditure in excess of $600,000 (or a lesser amount that is established, in accordance with section 1122(g)(1) of the Act, by the State in which the hospital is located) that relates to any of the following:

(i) Acquisition of land;

(ii) Improvement of land, buildings, and equipment; or

(iii) The replacement, modernization, and expansion of buildings and equipment.

(5) The plan must be submitted for review to the planning agency designated in accordance with section 1122(b) of the Act, or if an agency is not designated, to the appropriate health planning agency in the State. (See Part 100 of this title.) A capital expenditure is not subject to section 1122 review if 75 percent of the health care facility's patients who are expected to use the service for which the capital expenditure is made are individuals enrolled in a health maintenance organization (HMO) or competitive medical plan (CMP) that meets the requirements of section 1876(b) of the Act, and if the Department determines that the capital expenditure is for services and facilities that are needed by the HMO or CMP in order to operate efficiently and economically and that are not otherwise readily accessible to the HMO or CMP because—

(i) The facilities do not provide common services at the same site;

(ii) The facilities are not available under a contract of reasonable duration;

(iii) Full and equal medical staff privileges in the facilities are not available;

(iv) Arrangements with these facilities are not administratively feasible; or

(v) The purchase of these services is more costly than if the HMO or CMP provided the services directly.

(6) The plan must be reviewed and updated annually.

(7) The plan must be prepared—

(i) Under the direction of the governing body; and

(ii) By a committee consisting of representatives of the governing body, the administrative staff, and the medical staff of the institution.

(e) *Standard: Contracted services.* The governing body must be responsible for services furnished in the hospital whether or not they are furnished under contracts. The governing body must ensure that a contractor of services (including one for shared services and joint ventures) furnishes services that permit the hospital to comply with all applicable conditions of participation and standards for the contracted services.

(1) The governing body must ensure that the services performed under a contract are provided in a safe and effective manner.

(2) The hospital must maintain a list of all contracted services, including the scope and nature of the services provided.

(f) *Standard: Emergency services.* (1) If emergency services are provided at the hospital, the hospital must comply with the requirements of § 482.55.

(2) If emergency services are not provided at the hospital, the governing body must assure that the medical staff has written policies and procedures for appraisal of emergencies, initial treatment, and referral when appropriate.

Subpart C—Basic Hospital Functions

§ 482.21 Condition of participation: Quality assurance.

The governing body must ensure that there is an effective, hospital-wide quality assurance program to evaluate the provision of patient care.

(a) *Standard: Clinical plan.* The organized, hospital-wide quality assurance program must be ongoing and have a written plan of implementation.

(1) All organized services related to patient care, including services furnished by a contractor, must be evaluated.

(2) Nosocomial infections and medication therapy must be evaluated.

(3) All medical and surgical services performed in the hospital must be evaluated as they relate to appropriateness of diagnosis and treatment.

(b) *Standard: Medically-related patient care services.* The hospital must have an ongoing plan, consistent with available community and hospital resources, to provide or make available social work, psychological, and educational services to meet the

medically-related needs of its patients. The hospital also must have an effective, ongoing discharge planning program that facilitates the provision of followup care.

(1) Discharge planning must be initiated in a timely manner.

(2) Patients, along with necessary medical information, must be transferred or referred to appropriate facilities, agencies, or outpatient services, as needed, for followup or ancillary care.

(c) *Standard: Implementation.* The hospital must take and document appropriate remedial action to address deficiencies found through the quality assurance program. The hospital must document the outcome of the remedial action.

§ 482.22 Condition of participation: Medical staff.

The hospital must have an organized medical staff that operates under bylaws approved by the governing body and is responsible for the quality of medical care provided to patients by the hospital.

(a) *Standard: Composition of the medical staff.* The medical staff must be composed of doctors of medicine or osteopathy and, in accordance with State law, may also be composed of other practitioners appointed by the governing body.

(1) The medical staff must periodically conduct appraisals of its members.

(2) The medical staff must examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidates.

(b) *Standard: Medical staff organization and accountability.* The medical staff must be well organized and accountable to the governing body for the quality of the medical care provided to patients.

(1) The medical staff must be organized in a manner approved by the governing body.

(2) If the medical staff has an executive committee, a majority of the members of the committee must be doctors of medicine or osteopathy.

(3) The responsibility for organization and conduct of the medical staff must be assigned only to an individual doctor of medicine or osteopathy.

(c) *Standard: Medical staff bylaws.* The medical staff must adopt and enforce bylaws to carry out its responsibilities. The bylaws must:

(1) Be approved by the governing body.

(2) Include a statement of the duties and privileges of each category of medical staff (e.g., active courtesy, etc.)

(3) Describe the organization of the medical staff.

(4) Describe the qualifications to be met by a candidate in order for the medical staff to recommend that the candidate be appointed by the governing body.

(5) Include a requirement that a physical examination and medical history be done no more than 7 days before or 48 hours after an admission for each patient by a doctor of medicine or osteopathy, or, for patients admitted only for oromaxillofacial surgery, by an oromaxillofacial surgeon who has been granted such privileges by the medical staff in accordance with State law.

(6) Include criteria for determining the privileges to be granted to individual practitioners and a procedure for applying the criteria to individuals requesting privileges.

(d) *Standard: Autopsies.* The medical staff should attempt to secure autopsies in all cases of unusual deaths and of medical-legal and educational interest. The mechanism for documenting permission to perform an autopsy must be defined. There must be a system for notifying the medical staff, and specifically the attending practitioner, when an autopsy is being performed.

§ 482.23 Condition of participation: Nursing services.

The hospital must have an organized nursing service that provides 24-hour nursing services. The nursing services must be furnished or supervised by a registered nurse.

(a) *Standard: Organization.* The hospital must have a well-organized service with a plan of administrative authority and delineation of responsibilities for patient care. The director of the nursing service must be a licensed registered nurse. He or she is responsible for the operation of the service, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the hospital.

(b) *Standard: Staffing and delivery of care.* The nursing service must have adequate numbers of licensed registered nurses, licensed practical (vocational) nurses, and other personnel to provide nursing care to all patients as needed. There must be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the immediate availability of a registered nurse for bedside care of any patient.

(1) The hospital must provide 24-hour nursing services furnished or supervised by a registered nurse, and have a licensed practical nurse or registered nurse on duty at all times, except for rural hospitals that have in effect a 24-hour nursing waiver granted under § 405.1910(c) of this chapter.

(2) The nursing service must have a procedure to ensure that hospital nursing personnel for whom licensure is required have valid and current licensure.

(3) A registered nurse must supervise and evaluate the nursing care for each patient.

(4) The hospital must ensure that the nursing staff develops, and keeps current, a nursing care plan for each patient.

(5) A registered nurse must assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available.

(6) Non-employee licensed nurses who are working in the hospital must adhere to the policies and procedures of the hospital. The director of nursing service must provide for the adequate supervision and evaluation of the clinical activities of non-employee nursing personnel which occur within the responsibility of the nursing service.

(c) *Standard: Preparation and administration of drugs.* Drugs and biologicals must be prepared and administered in accordance with Federal and State laws, the orders of the practitioner or practitioners responsible for the patient's care as specified under § 482.12(c), and accepted standards of practice.

(1) All drugs and biologicals must be administered by, or under supervision of, nursing or other personnel in accordance with Federal and State laws and regulations, including applicable licensing requirements, and in accordance with the approved medical staff policies and procedures.

(2) All orders for drugs and biologicals must be in writing and signed by the practitioner or practitioners responsible for the care of the patient as specified under § 482.12(c). When telephone or oral orders must be used, they must be—

(i) Accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with Federal and State law;

(ii) Signed or initialed by the prescribing practitioner as soon as possible; and

(iii) Used infrequently.

(3) Blood transfusions and intravenous medications must be administered in accordance with State law and approved medical staff policies and procedures. If blood transfusions and intravenous medications are administered by personnel other than doctors of medicine or osteopathy, the

personnel must have special training for this duty.

(4) There must be a hospital procedure for reporting transfusion reactions, adverse drug reactions, and errors in administration of drugs.

§ 482.24 Condition of Participation Medical Record Services.

The hospital must have a medical record service that has administrative responsibility for medical records. A medical record must be maintained for every individual evaluated or treated in the hospital.

(a) *Standard: Organization and staffing.* The organization of the medical record service must be appropriate to the scope and complexity of the services performed. The hospital must employ adequate personnel to ensure prompt completion, filing, and retrieval of records.

(b) *Standard: Form and retention of record.* The hospital must maintain a medical record for each inpatient and outpatient. Medical records must be accurately written, promptly completed, properly filed and retained, and accessible. The hospital must use a system of author identification and record maintenance that ensures the integrity of the authentification and protects the security of all record entries.

(1) Medical records must be retained in their original or legally reproduced form for a period of at least 5 years.

(2) The hospital must have a system of coding and indexing medical records. The system must allow for timely retrieval by diagnosis and procedure, in order to support medical care evaluation studies.

(3) The hospital must have a procedure for ensuring the confidentiality of patient records. Information from or copies of records may be released only to authorized individuals, and the hospital must ensure that unauthorized individuals cannot gain access to or alter patient records. Original medical records must be released by the hospital only in accordance with Federal or State laws, court orders, or subpoenas.

(c) *Standard: Content of record.* The medical record must contain information to justify admission and continued hospitalization, support the diagnosis, and describe the patient's progress and response to medications and services.

(1) All entries must be legible and complete, and must be authenticated and dated promptly by the person (identified by name and discipline) who is responsible for ordering, providing, or evaluating the service furnished.

(i) The author of each entry must be identifed and must authenticate his or her entry.

(ii) Authentication may include signatures, written initials or computer entry.

(2) All records must document the following, as appropriate:

(i) Evidence of a physical examination, including a health history, performed no more than 7 days prior to admission or within 48 hours after admission.

(ii) Admitting diagnosis.

(iii) Results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient.

(iv) Documentation of complications, hospital acquired infections, and unfavorable reactions to drugs and anesthesia.

(v) Properly executed informed consent forms for procedures and treatments specified by the medical staff, or by Federal or State law if applicable, to require written patient consent.

(vi) All practitioners' orders, nursing notes, reports of treatment, medication records, radiology, and laboratory reports, and vital signs and other information necessary to monitor the patient's condition.

(vii) Discharge summary with outcome of hospitalization, disposition of case, and provisions for follow-up care.

(viii) Final diagnosis with completion of medical records within 30 days following discharge.

§ 482.25 Condition of participation: Pharmaceutical services.

The hospital must have pharmaceutical services that meet the needs of the patients. The institution must have a pharmacy directed by a registered pharmacist or a drug storage area under competent supervision. The medical staff is responsible for developing policies and procedures that minimize drug errors. This function may be delegated to the hospital's organized pharmaceutical service.

(a) *Standard: Pharmacy management and administration.* The pharmacy or drug storage area must be administered in accordance with accepted professional principles.

(1) A full-time, part-time, or consulting pharmacist must be responsible for developing, supervising, and coordinating all the activities of the pharmacy services.

(2) The pharmaceutical services must have an adequate number of personnel to ensure quality pharmaceutical services, including emergency services.

(3) Current and accurate records must be kept of the receipt and disposition of all scheduled drugs.

(b) *Standard: Delivery of services.* In order to provide patient safety, drugs and biologicals must be controlled and distributed in accordance with applicable standards of practice, consistent with Federal and State law.

(1) All compounding, packaging, and dispensing of drugs and biologicals must be under the supervision of a pharmacist and performed consistent with State and Federal laws.

(2) Drugs and biologicals must be kept in a locked storage area.

(3) Outdated, mislabeled, or otherwise unusable drugs and biologicals must not be available for patient use.

(4) When a pharmacist is not available, drugs and biologicals must be removed from the pharmacy or storage area only by personnel designated in the policies of the medical staff and pharmaceutical service, in accordance with Federal and State law.

(5) Drugs and biologicals not specifically prescribed as to time or number of doses must automatically be stopped after a reasonable time that is predetermined by the medical staff.

(6) Drug administration errors, adverse drug reactions, and incompatibilities must be immediately reported to the attending physician and, if appropriate, to the hospital-wide quality assurance program.

(7) Abuses and losses of controlled substances must be reported, in accordance with applicable Federal and State laws, to the individual responsible for the pharmaceutical service, and to the chief executive officer, as appropriate.

(8) Information relating to drug interactions and information of drug therapy, side effects, toxicology, dosage, indications for use, and routes of administration must be available to the professional staff.

(9) A formulary system must be established by the medical staff to assure quality pharmaceutical at reasonable costs.

§ 482.26 Condition of participation: Radiologic services.

The hospital must maintain, or have available, diagnostic radiologic services. If therapeutic services are also provided, they, as well as the diagnostic services, must meet professionally approved standards for safety and personnel qualifications.

(a) *Standard: Radiologic services.* The hospital must maintain, or have available, radiologic services according to needs of the patients.

(b) *Standard: Safety for patients and personnel.* The radiologic services, particularly ionizing radiology procedures, must be free from hazards for patients and personnel.

(1) Proper safety precutions must be maintained against radiation hazards. This includes adequate shielding for patients, personnel, and facilities, as well as appropriate storage, use, and disposal or radioactive materials.

(2) Periodic inspection of equipment must be made and hazards identified must be promptly corrected.

(3) Radiation workers must be checked periodically, by the use of exposure meters or badge tests, for amount of radiation exposure.

(4) Radiologic services must be provided only on the order of practitioners with clinical privileges or, consistent with State law, of other practitioners authorized by the medical staff and the governing body to order the services.

(c) *Standard: Personnel.* (1) A qualified full-time, part-time, or consulting radiologist must supervise the ionizing radiology services and must interpret only those radiologic tests that are determined by the medical staff to require a radiologist's specialized knowledge. For purposes of this section, a radiologist is a doctor of medicine or osteopathy who is qualified by education and experience in radiology.

(2) Only personnel designated as qualified by the medical staff may use the radiologic equipment and administer procedures.

(d) *Standard: Records.* Records of radiologic services must be maintained.

(1) The radiologist or other practitioner who performs radiology services must sign reports of his or her interpretations.

(2) The hospital must maintain the following for at least 5 years:

(i) Copies of reports and printouts.

(ii) Films, scans, and other image records, as appropriate.

§ 482.27 Condition of participation: Laboratory services.

The hospital must maintain, or have available, adequate clinical laboratory services to meet the needs of its patients. The hospital must ensure that all laboratory services provided to its patients are performed in a Medicare approved facility.

(a) *Standard: Adequacy of laboratory services.* The hospital must have laboratory services available, either directly or through a contractual agreement with a Medicare approved hospital or independent laboratory, that meet the needs of the patients and the medical staff.

(1) Emergency laboratory services must be available 24 hours a day.

(2) A written description of services provided must be available to the medical staff.

(3) The laboratory must make provision for proper receipt and reporting of tissue specimens.

(i) The medical staff and a pathologist must determine which tissue specimens require a macroscopic (gross) examination and which require both macroscopic and microscopic examinations.

(ii) Except as specified in paragraphs (a)(3) (iii) and (iv) of this section, the tissue examination reports must be signed by a physician certified in anatomic pathology by the American Board of Pathology or the American Osteopathic Board of Pathology or possessing qualifications that are equivalent to those required for certification (board eligible).

(iii) In the case of tests limited to skin pathology, the tissue examination reports may be signed by an individual—

(A) Certified in dermatopathology by the American Board of Dermatology or American Board of Pathology; or

(B) Possessing qualifications that are equivalent to those required for certification (board eligible).

(iv) In the case of tests limited to oral pathology, the tissue examination reports may be signed by an individual—

(A) Certified in oral pathology by the American Board of Oral Pathology; or

(B) Possessing qualifications that are equivalent to those required for certification (board eligible).

(4) For emergency situations, the hospital must—

(i) Directly provide a minimum blood supply;

(ii) Have a list of donors and equipment to obtain blood quickly; or

(iii) Contract with blood banks or other institutions to obtain blood quickly.

(b) *Standard: Laboratory management.* The clinical laboratory must meet the management requirements specified in § 405.1316 of this chapter.

(c) *Standard: Personnel.* The facility must provide personnel to direct and conduct the laboratory services.

(1) The laboratory director must be technically qualified to supervise the laboratory personnel and test performance.

(i) The director must be a pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services, or a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

(ii) If the laboratory performs anatomic pathology services, the tissue examination must be performed under the technical supervision of a pathologist or other individual who meets the requirements of paragraphs (a)(3) (iii) or (iv) of this section.

(iii) If the laboratory performs blood banking and transfusion services they must be performed under the technical supervision of a pathologist or other doctor of medicine or osteopathy with training and experience in transfusion therapy.

(2) The laboratory director must—

(i) Provide technical supervision of the laboratory services; and

(ii) Assure that tests, examinations, and procedures are properly performed, recorded, and reported.

(3) The laboratory director must ensure that the staff—

(i) Has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently;

(ii) Is sufficient in number for the scope and complexity of the services provided; and

(iii) Receives in-service training appropriate to the type and complexity of the laboratory services offered.

(4) The laboratory technologists must be technically competent to perform test procedures and report test results promptly and proficiently.

(d) *Standard: Blood and blood products.* The hospital must ensure that there are facilities for procurement, safe keeping, and transfusion of blood; and that blood products are provided or readily available.

(1) The hospital must maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized doctor of medicine or osteopathy.

(2) In the case of services provided by an outside blood bank, the hospital must have an agreement governing the procurement, transfer, and availability of blood that is reviewed and approved by the medical staff and administration.

(3) There must be provision for prompt blood grouping, antibody detection, and compatibility testing; and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a doctor of medicine or osteopathy.

(4) Blood storage facilities in the hospital must have an adequate

temperature alarm system that is regularly inspected.

(5) According to the hospital's established procedures, samples of each unit of transfused blood must be retained for further testing in the event of reactions. The hospital must promptly dispose of blood not retained for further testing that has exceed its expiration date.

(6) The hospital, according to its established procedures, must promptly investigate all transfusion reactions occurring in its own facility and make recommendations to the medical staff regarding improvements in transfusion procedures.

(e) *Standard: Proficiency testing.* The laboratory must meet the proficiency testing provisions specified in §§ 405.1310(c) and 405.1314(a) of this chapter.

(f) *Standard: Quality Control.* The laboratory must meet the quality control requirements specified in § 405.1317 of this chapter.

§ 482.28 Condition of participation: Food and dietetic services.

The hospital must have organized dietary services that are directed and staffed by adequate qualified personnel. However, a hospital that has a contract with an outside food management company may be found to meet this Condition of participation if the company has a dietitian who serves the hospital on a full-time, part-time, or consultant basis, and if the company maintains at least the minimum standards specified in this section and provides for constant liaison with the hospital medical staff for recommendations on dietetic policies affecting patient treatment.

(a) *Standard Organization.*

(1) The hospital must have a full-time employee who—

(i) Serves as director of the food and dietetic service;

(ii) Is responsible for the daily management of the dietary services; and

(iii) Is qualified by experience or training.

(2) There must be a qualified dietitian, full-time, part-time, or on a consultant basis.

(3) There must be administrative and technical personnel competent in their respective duties.

(b) *Standard: Diets.* Menus must meet the needs of the patients.

(1) Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the patients.

(2) Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the patients.

(3) A current therapeutic diet manual approved by the dietitian and medical staff must be readily available to all medical, nursing, and food service personnel.

§ 482.30 Condition of participation: Utilization review.

The hospital must have in effect a utilization review (UR) plan that provides for review of services furnished by the institution and by members of the medical staff to patients entitled to benefits under the Medicare and Medicaid programs.

(a) *Applicability.* The provisions of this section apply except in either of the following circumstances:

(1) A Utilization and Quality Control Peer Review Organization (PRO) has assumed binding review for the hospital.

(2) HCFA has determined that the UR procedures established by the State under title XIX of the Act are superior to the procedures required in this section, and has required hospitals in that State to meet the UR plan requirements under §§ 456.50 through 456.245 of this chapter.

(b) *Standard: Composition of utilization review committee.* A UR committee consisting of two or more practitioners must carry out the UR function. At least two of the members of the committee must be doctors of medicine or osteopathy. The other members may be any of the other types of practitioners specified in § 482.12(c)(1).

(1) Except as specified in paragraphs (b) (2) and (3) of this section, the UR committee must be one of the following:

(i) A staff committee of the institution;

(ii) A group outside the institution—

(A) Established by the local medical society and some or all of the hospitals in the locality; or

(B) Established in a manner approved by HCFA.

(2) If, because of the small size of the institution, it is impracticable to have a properly functioning staff committee, the UR committee must be established as specified in paragraph (b)(1)(ii) of this section.

(3) The committee's or group's reviews may not be conducted by any individual who—

(i) Has a direct financial interest (for example, an ownership interest) in that hospital; or

(ii) Was professionally involved in the care of the patient whose case is being reviewed.

(c) *Standard: Scope and frequency of review.* (1) The UR plan must provide for review for Medicare and Medicaid patients with respect to the medical necessity of—

(i) Admissions to the institution;

(ii) The duration of stays; and

(iii) Professional services furnished, including drugs and biologicals.

(2) Review of admissions may be performed before, at, or after hospital admission.

(3) Except as specified in paragraph (e) of this section; reviews may be conducted on a sample basis.

(4) Hospitals that are paid for inpatient hospital services under the prospective payment system set forth in Part 412 of this chapter must conduct review of duration of stays and review of professional services as follows:

(i) For duration of stays, these hospitals need review only cases that they reasonably assume to be outlier cases based on extended length of stay, as described in § 412.80(a)(1)(i) of this chapter; and

(ii) For professional services, these hospitals need review only cases that they reasonably assume to be outlier cases based on extraordinarily high costs, as described in § 412.80(a)(1)(ii) of this chapter.

(d) *Standard: Determination regarding admissions or continued stays.*

(1) The determination that an admission or continued stay is not medically necessary—

(i) May be made by one member of the UR committee if the practitioner or practitioners responsible for the care of the patient, as specified of § 482.12(c), concur with the determination or fail to present their views when afforded the opportunity; and

(ii) Must be made by at least two members of the UR committee in all other cases.

(2) Before making a determination that an admission or continued stay is not medically necessary, the UR committee must consult the practitioner or practitioners responsible for the care of the patient, as specified in § 482.12(c), and afford the practitioner or practitioners the opportunity to present their views.

(3) If the committee decides that admission to or continued stay in the hospital is not medically necessary, written notification must be given, no later than 2 days after the determination, to the hospital, the patient, and the practitioner or practitioners responsible for the care of the patient, as specified in § 482.12(c);

(e) *Standard: Extended stay review.* (1) In hospitals that are not paid under the prospective payment system, the UR committee must make a periodic review, as specified in the UR plan, of each

current inpatient receiving hospital services during a continuous period of extended duration.

The scheduling of the periodic reviews may—

(i) Be the same for all cases; or

(ii) Differ for different classes of cases.

(2) In hospitals paid under the prospective payment system, the UR committee must review all cases reasonably assumed by the hospital to be outlier cases because the extended length of stay exceeds the threshold criteria for the diagnosis, as described in § 412.80(a)(1)(i). The hospital is not required to review an extended stay that does not exceed the outlier threshold for the diagnosis.

(3) The UR committee must make the periodic review no later than 7 days after the day required in the UR plan.

(f) *Standard: Review of professional services.* The committee must review professional services provided, to determine medical necessity and to promote the most efficient use of available health facilities and services.

§ 482.41 Condition of participation: Physical environment.

The hospital must be constructed, arranged, and maintained to ensure the safety of the patient, and to provide facilities for diagnosis and treatment and for special hospital services appropriate to the needs of the community.

(a) *Standard: Buildings.* The condition of the physical plant and the overall hospital environment must be developed and maintained in such a manner that the safety and well-being of patients are assured.

(1) There must be emergency power and lighting in at least the operating, recovery, intensive care, and emergency rooms, and stairwells. In all other areas not serviced by the emergency supply source, battery lamps and flashlights must be available.

(2) There must be facilities for emergency gas and water supply.

(b) *Standard: Life safety from fire.*

(1) The hospital must meet the applicable provisions of the 1981 edition of the *Life Safety Code* of the National Fire Protection Association that apply to hospitals. (Which is incorporated by reference [1]

[1] Incorporation of the 1981 edition of the Life Safety Code which is also referenced in other parts of Chapter IV, was approved by the Director of the **Federal Register** on September 28, 1981. The code is available for inspection at the Office of the **Federal Register** Information Center, Room 8301, 1110 L Street N.W., Washington, D.C. Copies may be obtained from—

National Fire Protection Association, Battery March Park, Quincy, Mass. 02269.

(i) Any facility that on November 26, 1982 complied, with or without waivers, with the requirements of the 1967 edition of the *Life Safety Code,* is considered to be in compliance with this standard so long as the facility continues to remain in compliance with that edition of the Code.

(ii) Afer consideration of State survey agency findings, HCFA may waive specific provisions of the *Life Safety Code* which, if rigidly applied, would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of patients.

(iii) The provisions of the *Life Safety Code* do not apply in a State where HCFA finds that a fire and safety code imposed by State law adequately protects patients in hospitals.

(2) The hospital must have procedures for the proper routine storage and prompt disposal of trash.

(3) The hospital must have written fire control plans that contain provisions for prompt reporting of fires; extinguishing fires; protection of patients, personnel and guests; evacuation; and cooperation with fire fighting authorities.

(4) The hospital must maintain written evidence of regular inspection and approval by State or local fire control agencies.

(c) *Standard: Facilities.* The hospital must maintain adequate facilities for its services.

(1) Diagnostic and therapeutic facilities must be located for the safety of patients.

(2) Facilities, supplies, and equipment must be maintained to ensure an acceptable level of safety and quality.

(3) The extent and complexity of facilities must be determined by the services offered.

(4) There must be proper ventilation, light, and temperature controls in pharmaceutical, food preparation, and other appropriate areas.

§ 482.42 Condition of participation: Infection control.

The hospital must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active program for the prevention, control, and investigation of infections and communicable diseases.

(a) *Standard: Organization and policies.* A person or persons must be designated as infection control officer or officers to develop and implement policies governing control of infections and communicable diseases.

(1) The infection control officer or officers must develop a system for identifying, reporting, investigating, and controlling infections and communicable diseases of patients and personnel.

(2) The infection control officer or officers must maintain a log of incidents related to infections and communicable diseases.

(b) *Standard: Responsibilities of chief executive officer, medical staff, and director of nursing services.* The chief executive officer, the medical staff, and the director of nursing services must—

(1) Ensure that the hospitalwide quality assurance program and training programs address problems identified by the infection control officer or officers; and

(2) Be responsible for the implementation of successful corrective action plans in affected problem areas.

If any changes in this Code are also to be incorporated by reference, a notice of that effect will be published in the **Federal Register.**

Subpart D—Optional Hospital Services

§ 482.51 Condition of participation: Surgical services.

If the hospital provides surgical services, the services must be well organized and provided in accordance with acceptable standards of practice. If outpatient surgical services are offered the services must be consistent in quality with inpatient care in accordance with the complexity of services offered.

(a) *Standard: Organization and staffing.* The organization of the surgical services must be appropriate to the scope of the services offered.

(1) The operating rooms must be supervised by an experienced registered nurse or a doctor of medicine or osteopathy.

(2) Licensed practical nurses (LPNs) and surgical technologists (operating room technicians) may serve as "scrub nurses" under the supervision of a registered nurse.

(3) Qualified registered nurses may perform circulating duties in the operating room. In accordance with applicable State laws and approved medical staff policies and procedures, LPNs and surgical technologists may assist in circulatory duties under the surpervision of a qualified registered nurse who is immediately available to respond to emergencies.

(4) Surgical privileges must be delineated for all practitioners performing surgery in accordance with the competencies of each practitioner. The surgical service must maintain a roster of practitioners specifying the surgical privileges of each practitioner.

(b) *Standard: Delivery of service.* Surgical services must be consistent with needs and resources. Policies governing surgical care must be designed to assure the achievement and maintenance of high standards of medical practice and patient care.

(1) There must be a complete history and physical work-up in the chart of every patient prior to surgery, except in emergencies. If this has been dictated, but not yet recorded in the patient's chart, there must be a statement to that effect and an admission note in the chart by the practitioner who admitted the patient.

(2) A properly executed informed consent form for the operation must be in the patient's chart before surgery, except in emergencies.

(3) The following equipment must be available to the operating room suites: call-in-system, cardiac monitor, resuscitator, defibrillator, aspirator, and tracheotomy set.

(4) There must be adequate provisions for immediate post-operative care.

(5) The operating room register must be complete and up-to-date.

(6) An operative report describing techniques, findings, and tissues removed or altered must be written or dictated immediately following surgery and signed by the surgeon.

§ 482.52 Condition of participation: Anesthesia services.

If the hospital furnishes anesthesia services, they must be provided in a well organized manner under the direction of a qualified doctor of medicine or osteopathy. The service is responsible for all anesthesia administered in the hospital.

(a) *Standard: Organization and Staffing.* The organization of anesthesia services must be appropriate to the scope of the services offered. Anesthesia must be administered by only—

(1) A qualified anesthesiologist;

(2) A doctor of medicine or osteopathy (other than an anesthesiologist);

(3) A dentist, oral surgeon, or podiatrist who is qualified to administer anesthesia under State law;

(4) A certified registered nurse anesthetist (CRNA) who is under the supervision of the operating practitioner or of an anesthesiologist who is immediately available if needed; or

(5) An anesthesiology assistant who is permitted by State law to administer anesthesia, who has successfully completed a 6-year program for anesthesiology assistants, 2 years of which consist of specialized academic and clinical training in anesthesia, and who is under the direct supervision of an anesthesiologist who is physically present.

(b) *Standard: Delivery of services.* Anesthesia services must be consistent with needs and resources. Policies on anesthesia procedures must include the delineation of preanesthesia and post anesthesia responsibilities. The policies must ensure that the following are provided for each patient:

(1) A preanesthesia evaluation by an individual qualified to administer anesthesia under paragraph (a) of this section performed within 48 hours prior to surgery.

(2) An intraoperative anesthesia record.

(3) With respect to inpatients, a postanesthesia followup report by the individual who administers the anesthesia that is written within 48 hours after surgery.

(4) With respect to outpatients, a postanesthesia evaluation for proper anesthesia recovery performed in accordance with policies and procedures approved by the medical staff.

§ 482.53 Condition of participation: Nuclear medicine services.

If the hospital provides nuclear medicine services, those services must meet the needs of the patients in accordance with acceptable standards of practice.

(a) *Standard: Organization and staffing.* The organization of the nuclear medicine service must be appropriate to the scope and complexity of the services offered.

(1) There must be a director who is a doctor of medicine or osteopathy qualified in nuclear medicine.

(2) The qualifications, training, functions, and responsibilities of nuclear medicine personnel must be specified by the service director and approved by the medical staff.

(b) *Standard: Delivery of service.* Radioactive materials must be prepared, labeled, used, transported, stored, and disposed of in accordance with acceptable standards of practice.

(1) In-house preparation of radiopharmaceuticals is by, or under, the direct supervision of an appropriately trained registered pharmacist or a doctor of medicine or osteopathy.

(2) There is proper storage and disposal of radioactive material.

(3) If clinical laboratory tests are performed in the nuclear medicine service, the service must meet the requirement for clinical laboratories with respect to management, adequacy of facilities, proficiency testing and quality control (see § 482.27 (a), (b), (e), and (f)).

(c) *Standard: Facilities.* Equipment and supplies must be appropriate for the types of nuclear medicine services offered and must be maintained for safe and efficient performance. The equipment must be—

(1) Maintained in safe operating condition; and

(2) Inspected, tested, and calibrated at least annually by qualified personnel.

(d) *Standard: Records.* The hospital must maintain signed and dated reports of nuclear medicine interpretations, consultations, and procedures.

(1) The hospital must maintain copies of nuclear medicine reports for at least 5 years.

(2) The practitioner approved by the medical staff to interpret diagnostic procedures must sign and date the interpretation of these tests.

(3) The hospital must maintain records of the receipt and disposition of radiopharmaceuticals.

(4) Nuclear medicine services must be ordered only by practitioner whose scope of Federal or State licensure and whose defined staff privileges allow such referrals.

§ 482.54 Condition of participation: Outpatient services.

If the hospital provides outpatient services, the services must meet the needs of the patients in accordance with acceptable standards of practice.

(a) *Standard: Organization.* Outpatient services must be appropriately organized and integrated with inpatient services.

(b) *Standard: Personnel.* The hospital must—

(1) Assign an individual to be responsible for outpatient services; and

(2) Have appropriate professional and nonprofessional personnel available.

§ 482.55 Condition of participation: Emergency services.

The hospital must meet the emergency needs of patients in accordance with acceptable standards of practice.

(a) *Standard: Organization and direction.* If emergency services are provided at the hospital—

(1) The services must be organized under the direction of a qualified member of the medical staff;

(2) The services must be integrated with other departments of the hospital;

(3) The policies and procedures governing medical care provided in the emergency service or department are established by and are a continuing responsibility of the medical staff.

(b) *Standard: Personnel.* (1) The emergency services must be supervised by a qualified member of the medical staff.

(2) There must be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the facility.

§ 482.56 Condition of participation: Rehabilitation services.

If the hospital provides rehabilitation, physical therapy, occupational therapy, audiology, or speech pathology services, the services must be organized and staffed to ensure the health and safety of patients.

(a) *Standard: Organization and staffing.* The organization of the service must be appropriate to the scope of the services offered.

(1) The director of the services must have the necessary knowledge, experience, and capabilities to properly supervise and administer the services.

(2) Physical therapy, occupational therapy, or speech therapy, or audiology services, if provided, must be provided by staff who meet the qualifications specified by the medical staff, consistent with State law.

(b) *Standard: Delivery of services.* Services must be furnished in accordance with a written plan of treatment. Services must be given in accordance with orders of practitioners who are authorized by the medical staff to order the services, and the orders must be incorporated in the patient's record.

§ 482.57 Condition of participation: Respiratory care services.

The hospital must meet the needs of the patients in accordance with acceptable standards of practice. The following requirements apply if the hospital provides respiratory care service.

(a) *Standard: Organization and Staffing.* The organization of the respiratory care services must be appropriate to the scope and complexity of the services offered.

(1) There must be a director of respiratory care services who is a doctor of medicine or osteopathy with the knowledge experience, and capabilities to supervise and administer the service properly. The director may serve on either a full-time or part-time basis.

(2) There must be adequate numbers of respiratory therapists, respiratory therapy technicians, and other personnel who meet the qualifications specified by the medical staff, consistent with State law.

(b) *Standard: Delivery of Services.* Services must be delivered in accordance with medical staff directives.

(1) Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures must be designated in writing.

(2) If blood gases or other clinical laboratory tests are performed in the respiratory care unit, the unit must meet the requirements for clinical laboratories with respect to management adequacy of facilities, proficiency testing, and quality control. (See § 482.27(a), (b), (e) and (f) for requirements applicable to laboratories).

(3) Services must be provided only on, and in accordance with, the orders of a doctor of medicine or osteopathy.

Subpart E—Requirements for Specialty Hospitals

§ 482.60 Special provisions applying to psychiatric hospitals.

Psychiatric hospitals must—

(a) Be primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;

(b) Meet the conditions of participation specified in §§ 482.1 through 482.23 and §§ 482.25 through 482.57;

(c) Maintain clinical records on all patients, including records sufficient to permit HCFA to determine the degree and intensity of treatment furnished to Medicare beneficiaries, as specified in § 482.61; and

(d) Meet the staffing requirements specified in § 482.62.

§ 482.61 Condition of participation: Special medical record requirements for psychiatric hospitals.

The medical records maintained by a psychiatric hospital must permit determination of the degree and intensity of the treatment provided to individuals who are furnished services in the institution.

(a) *Standard: Development of assessment/diagnostic data.* Medical records must stress the psychiatric components of the record, including history of findings and treatment provided for the psychiatric condition for which the patient is hospitalized.

(1) The identification data must include the patient's legal status.

(2) A provisional or admitting diagnosis must be made on every patient at the time of admission, and must include the diagnoses of intercurrent diseases as well as the psychiatric diagnoses.

(3) The reasons for admission must be clearly documented as stated by the patient and/or others significantly involved.

(4) The social service records, including reports of interviews with patients, family members, and others, must provide an assessment of home plans and family attitudes, and community resource contracts as well as a social history.

(5) When indicated, a complete neurological examination must be recorded at the time of the admission physical examination.

(b) *Standard: Psychiatric evaluation.* Each patient must receive a psychiatric evaluation that must—

(1) Be completed within 60 hours of admission;

(2) Include a medical history;

(3) Contain a record of mental status;

(4) Note the onset of illness and the circumstances leading to admission;

(5) Describe attitudes and behavior;

(6) Estimate intellectual functioning, memory functioning, and orientation; and

(7) Include an inventory of the patient's assets in descriptive, not interpretative, fashion.

(c) *Standard: Treatment plan.*

(1) Each patient must have an individual comprehensive treatment plan that must be based on an inventory of the patient's strengths and disabilities. The written plan must include—

(i) A substantiated diagnosis;

(ii) Short-term and long-range goals;

(iii) The specific treatment modalities utilized;

(iv) The responsibilities of each member of the treatment team; and

(v) Adequate documentation to justify the diagnosis and the treatment and rehabilitation activities carried out.

(2) The treatment received by the patient must be documented in such a way to assure that all active therapeutic efforts are included.

(d) *Standard: Recording progress.* Progress notes must be recorded by the doctor of medicine or osteopathy responsible for the care of the patient as specified in § 482.12(c), nurse, social worker and, when appropriate, others significantly involved in active treatment modalities. The frequency of progress notes is determined by the condition of the patient but must be recorded at least weekly for the first 2 months and at least once a month thereafter and must contain recommendations for revisions in the treatment plan as indicated as well as precise assessment of the patient's

progress in accordance with the original or revised treatment plan.

(e) *Standard: Discharge planning and discharge summary.* The record of each patient who has been discharged must have a discharge summary that includes a recapitulation of the patient's hospitalization and recommendations from appropriate services concerning follow-up or aftercare as well as a brief summary of the patient's condition on discharge.

§ 482.62 Condition of participation: Special staff requirements for psychiatric hospitals.

The hospital must have adequate numbers of qualified professional and supportive staff to evaluate patients, formulate written, individualized comprehensive treatment plans, provide active treatment measures, and engage in discharge planning.

(a) *Standard: Personnel.* The hospital must employ or undertake to provide adequate numbers of qualified professional, technical, and consultative personnel to:

(1) Evaluate patients;

(2) Formulate written individualized, comprehensive treatment plans;

(3) Provide active treatment measures; and

(4) Engage in discharge planning.

(b) *Standard: Director of inpatient psychiatric services; medical staff.* Inpatient psychiatric services must be under the supervision of a clinical director, service chief, or equivalent who is qualified to provide the leadership required for an intensive treatment program. The number and qualifications of doctors of medicine and osteopathy must be adequate to provide essential psychiatric services.

(1) The clinical director, service chief, or equivalent must meet the training and experience requirements for examination by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry.

(2) The director must monitor and evaluate the quality and appropriateness of services and treatment provided by the medical (physician) staff.

(c) *Standard: Availability of medical personnel.* Doctors of medicine or osteopathy and other appropriate professional personnel must be available to provide necessary medical and surgical diagnostic and treatment services. If medical and surgical diagnostic and treatment services are not available within the institution, the institution must have an agreement with an outside source of these services to ensure that they are immediately available or a satisfactory agreement must be established for transferring patients to a general hospital that participates in the Medicare program.

(d) *Standard: Nursing services.* The hospital must have a qualified director of psychiatric nursing services. In addition to the director of nursing, there must be adequate numbers of registered nurses, licensed practical nurses, and mental health workers to provide nursing care necessary under each patient's active treatment program and to maintain progress notes on each patient.

(1) The director of psychiatric nursing services must be a registered nurse who has a master's degree in psychiatric or mental health nursing, or its equivalent from a school of nursing accredited by the National League for Nursing, or be qualified by education and experience in the care of the mentally ill. The director must demonstrate competence to participate in interdisciplinary formulation of individual treatment plans; to give skilled nursing care and therapy; and to direct, monitor, and evaluate the nursing care furnished.

(2) The staffing pattern must insure the availability of a registered professional nurse 24 hours each day. There must be adequate numbers of registered nurses, licensed practical nurses, and mental health workers to provide the nursing care necessary under each patient's active treatment program.

(e) *Standard: Psychological services.* The hospital must provide or have available psychological services to meet the needs of the patients.

(f) *Standard: Social services.* There must be a director of social services who monitors and evaluates the quality and appropriateness of social services furnished. The services must be furnished in accordance with accepted standards of practice and established policies and procedures.

(1) The director of the social work department or service must have a master's degree from an accredited school of social work or must be qualified by education and experience in the social services needs of the mentally ill. If the director does not hold a masters degree in social work, at least one staff member must have this qualification.

(2) Social service staff responsibilities must include, but are not limited to, participating in discharge planning, arranging for follow-up care, and developing mechanisms for exchange of appropriate, information with sources outside the hospital.

(g) *Standard: Therapeutic activities.* The hospital must provide a therapeutic activities program.

(1) The program must be appropriate the needs and interests of patients and be directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

(2) The number of qualified therapists, support personnel, and consultants must be adequate to provide comprehensive therapeutic activities consistent with each patient's active treatment program.

§ 482.66 Conditions of participation—Special requirements for hospital providers of long-term care services ("swing-beds").

A hospital that has a Medicare provider agreement must meet the following requirements in order to be granted an approval from HCFA to provide post-hospital extended care services, as specified in § 405.120, and be reimbursed as a swing-bed hospital, as specified in § 405.434:

(a) *Standard: Eligibility.* A hospital must meet the following eligibility requirements: (1) The facility has fewer than 50 hospital beds, excluding beds for newborns and beds in intensive care type inpatient units (for eligibility of hospitals with distinct parts electing the optional reimbursement method, see § 405.453(d)(5);

(2) The hospital is located in a rural area. This includes all areas not delineated as "urbanized" areas by the Census Bureau, based on the most recent census;

(3) When required by State in which it is located, the hospital has been granted a certificate of need for the provision of long-term care services from the State health planning and development agency (designated under section 1521 of the Public Health Service Act);

(4) The hospital does not have in effect a 24-hour nursing waiver granted under § 405.1910(c); and

(5) The hospital has not had a swing-bed approval terminated within the two years previous to application.

(b) *Standard: Skilled nursing facility services.* The facility is substantially in compliance with the following skilled nursing facility requirements contained in Subpart K of Part 405 of this chapter.

(1) Patients' rights (§ 405.1121(k)(2), (3), (4), (7), (8), (10), (11), (13), and (14);

(2) Specialized rehabilitative services (§ 405.1126(a), (b), and (c));

(3) Dental services (§ 405.1129);

(4) Social services (§ 405.1130);

(5) Patient activities (§ 405.1131); and

(6) Discharge planning (§ 405.1137(h)).

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

The authority citation of Part 489 continues to read as follows:

Authority: Secs. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 489.21 [Amended]

J. In Part 489, § 489.21, the reference in paragraph (b)(3) to "Subparts J and K of Part 405" is changed to read "Subpart K of Part 405 and Part 482 of this chapter."

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance Program; Program No. 13.773—Medicare: Hospital Insurance; Program No. 13.744—Medicare: Supplementary Medical Insurance)

Dated: February 21, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: April 26, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-13171 Filed 6-16-86; 8:45 am]

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federal register

Tuesday
June 17, 1986

Part III

Department of Education

Office of Postsecondary Education

Availability of Amendments to the 1985-86 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Availability of Amendments to the 1985–86 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits

AGENCY: Department of Education.

ACTION: Notice of availability of amendments to the 1985–86 Directory of low-income schools for cancellation of loans for teaching service.

SUMMARY:

Institutions and borrowers participating in the National Defense and National Direct Student Loan Programs and other interested persons are advised that they may obtain information regarding the amendments to the *1985–86 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits (Directory).* The amendments identify changes in the schools that qualify for teacher cancellation benefits under each of the loan programs.

DATE: The amendments to the *Directory* are available on or after June 17, 1986.

ADDRESS: Information concerning specific schools listed in the amendments to the *Directory* may be obtained from Ronald W. Allen, Campus-Based Programs Branch, Division of Program Operations, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., [Room 4627, ROB–3] Washington, D.C. 20202, Telephone (202) 245–9640.

FOR FURTHER INFORMATION CONTACT: The amendments to the *Directory* are available in (1) each of the participating institutions of higher education, (2) each of the fifty-seven (57) State and Trust Territory Departments of Education, (3) each of the major billing services, and (4) each of the ten (10) regional offices of the U.S. Department of Education (see Appendix to this notice for the addresses of the regional offices).

SUPPLEMENTARY INFORMATION: The Secretary of Education published a notice in the **Federal Register** on September 12, 1985 (50 FR 37264–37265), that the *1985–86 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits* was available. The Secretary has revised the *Directory* due to the openings and closings of schools, name changes, and other corrections. The amendments to the *Directory* make these changes.

The procedures for selecting schools for cancellation benefits are described in the National Defense and Direct Student Loan program regulations (34 CFR 674.53, 674.54). The Secretary has determined that for the 1985–86 academic year full-time teaching in the schools set forth in the amendments to the *Directory* qualifies for cancellation.

The Secretary is providing the amendments to the *Directory* to each institution participating in the National Direct Student Loan Program. Borrowers and other interested parties may check with their lending institution, the appropriate State Department of Education, regional offices of the Department of Education, or the Office of Student Financial Assistance of the Department of Education concerning the identity of qualifying schools for the 1985–86 academic year.

The Office of Student Financial Assistance will retain, on a permanent basis, copies of past, current, and future Amendments and the *Directories.*

(Catalog of Federal Domestic Assistance Number 84. 037; National Defense/Direct Student Loan Cancellations.)

Dated: June 12, 1986.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

Appendix to Notice of Availability of 1985–86 Directory of Low-Income Schools for Cancellation of Loans for Teaching Service

Department of Education Regional Offices

Mr. David Bayer, Chief, Training and Technical Assistance Unit, Region I: OSFA/ED, J.W. McCormack Post Office and Courthouse Building, 5 Post Office Square, Room 510, Boston, Massachusetts 02109, (617) 223–6895, FTS: 223–6895, Telecopier: FTS 223–5383

Ms. Janet Finello, Training and Technical Assistance Specialist, Region II: OSFA/ED, 26 Federal Plaza, 3954, New York, New York 10278, (212) 264–4426 FTS: 264–4426, Telecopier: FTS 264–4427

Ms. Merrill-Jean Bailey, Acting Chief, Training and Technical Assistance, Region III: OSFA/ED, P.O. Box 13716 (3535 Market Street), Philadelphia, Pennsylvania 19104, (215) 596–0247, FTS: 596–0247, Telecopier: FTS 596–1032

Ms. Judith Brantley, Assistant Regional Administrator for Training and Dissemination, Region IV: OSFA/ED, 101 Marietta Tower, Suite 423, Atlanta, Georgia 30323, (404) 331–4171, FTS: 242–4171, Telecopier: FTS 242–5886

Mr. Allen Sevigny, Chief, Training and Technical Assistance Staff, Region V: OSFA/ED, 300 South Wacker Drive, 12th Floor, Chicago, Illinois 60606, (312) 353–8103, FTS: 353–8103, Telecopier: FTS 353–8760

Mr. Lyndon Lee, Chief, Training and Technical Assistance Branch, Region VI: OSFA/ED, 1200 Main Tower, Room 2150, Dallas, Texas 75202, (214) 767–3811, FTS: 767–3811, Telecopier: FTS 729–3634

Mr. Jerry W. Craft, Chief, Technical Assistance and Training, Region VII: OSFA/ED, Executive Hills North, 7th Floor, 10220 North Executive Hills Boulevard, Kansas City, Missouri 64153, (816) 891–8055, FTS: 758–7961, Telecopier: FTS

Mr. David S. Gorton, Acting Chief, Training and Technical Assistance, Region VIII: OSFA/ED, 1961 Stout Street, Third Floor, Denver, Colorado 80294, (303) 844–3676, FTS: 564–3676, Telecopier: FTS 564–2524

Ms. Mary Ann Faris, Assistant Regional Administrator for Training and Dissemination, Region IX: OSFA/ED, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–0137, FTS: 556–0137, Telecopier: FTS 556–7242

Mr. W. Phillips Rockefeller, Chief, Technical Assistance and Training Branch, Region X: OSFA/ED, 3rd and Broad Building, Mail Stop 102, 2901 Third Avenue, Seattle, Washington 98121, (206) 442–4027, FTS: 399–0493 Telecopier: FTS 399–1232.

[FR Doc. 86–13624 Filed 6–16–86; 8:45 am]

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